APPENDIX A

FRATERNAL ORDER OF POLICE
Penn-Jersey Lodge 30 and Joseph Vena, Plaintiffs-Respondents,

v.

The DELAWARE RIVER PORT AUTHORITY, Defendant-Appellant.

Superior Court of New Jersey,
Appellate Division.

Argued March 29, 1999.
Decided July 22, 1999.

Before Judges D'ANNUNZIO, CUFF and COLLESTER.

The opinion of the court was delivered by

CUFF, J.A.D.

In this appeal, we must decide whether the Delaware River Port Authority (DRPA) is required to submit to mediation or public interest arbitration in accordance with the labor laws of this State governing collective bargaining for public employees. We hold that it does and affirm the order requiring the DRPA to mediate and, if necessary, submit to public interest arbitration its contract dispute with its police officers.

The DRPA is a bi-state agency created by a Compact between New Jersey, *N.J.S.A.* 32:3-1 to -18, and Pennsylvania, *Pa. Stat. Ann.* tit. 36, §§ 3503 to 3510.7 (West 1999), and approved by Congress, *Res.* 26, 47 *Stat.* 308 (1932).[1] The Compact declares that the interests of both states will be best served by consolidating two existing commissions and granting to the combined authority additional powers and authority regarding an existing bridge across the Delaware River and additional transportation facilities between the two states.

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1. Such an interstate compact is "law of the Union," *Delaware River Joint Toll Bridge Comm'n v. Colburn,* 310 U.S. 419, 427, 60 *S.Ct.* 1039, 1040, 84 *L.Ed.* 1287, 1289 (1940), whose interpretation is a question of federal law. *Cuyler v. Adams,* 449 U.S. 433, 438 n. 7, 101 *S.Ct.* 703, 707 n. 7, 66 *L.Ed.*2d 641, 648 n. 7 (1981); *Eastern Paralyzed Veterans Ass'n, Inc. v. City of Camden,* 111 *N.J.* 389, 397, 545 A.2d 127 (1988).

N.J.S.A. 32:3-1. Its mission is to develop, operate and maintain transportation facilities between the two states. *N.J.S.A.* 32:3-1, -2. It operates and maintains the Betsy Ross, Benjamin Franklin, Walt Whitman and Commodore Barry Bridges which span the Delaware River and the PATCO high-speed rail line between Philadelphia and suburban Lindenwold, New Jersey. It is a "body corporate and politic," constituting "the public corporate instrumentality" of the two states and "exercising an essential governmental function." *N.J.S.A.* 32:3-2.

The DRPA is authorized to appoint, hire or employ "such agents and employees as it may require for the performance of its duties, . . . and fix and determine their qualifications, duties and compensation." *N.J.S.A.* 32:3-5(e). To that end, the DRPA employs seventy-eight police officers. The DRPA voluntarily recognized plaintiff, Fraternal Order of Police, Penn-Jersey Lodge 30 (Lodge 30), as the representative of these officers, and the parties have negotiated and executed collective bargaining agreements for over twenty years.

The parties' most recent agreement expired in 1996 and they commenced negotiations regarding a new agreement. When their negotiations reached an impasse, the DRPA imposed its final offer on Lodge 30. Plaintiffs[2] sought to enjoin the DRPA from implementing its terms and conditions of employment, to require the continuation of good faith bargaining, to appoint a mediator to assist the process, and for "such further relief that this Court deems necessary."

The DRPA moved for summary judgment arguing that, despite public employees' right to organize and negotiate collectively in both New Jersey and Pennsylvania, there was no governmental agency to regulate the parties' negotiations. Therefore, the DRPA inferred that neither mediation nor public interest arbitration was available to resolve this dispute. Moreover, the DRPA contended that judicial oversight would be unworkable and New Jersey and Pennsylvania had not agreed to that procedure.

The DRPA also argued that, despite its recognition of Lodge 30 as the collective bargaining agent for the police

2. In addition to Lodge 30, its president, Joseph Vena, is also a plaintiff.

officers, it was under no legal duty or obligation to negotiate with Lodge 30. Therefore, when the parties failed to reach an accord on a new contract, it was free to implement the terms and conditions of employment which it deemed suitable. The DRPA noted that it submitted its minutes to Governor Whitman and the resolution became effective when she declined to veto the resolution.

The DRPA's motion for summary judgment was denied. Judge Supnick determined that Pennsylvania and New Jersey had "parallel or complementary legislation of a different nature, but which ... nevertheless recognizes those same rights and clearly gives public employees a right to freely organize and designate representatives and also to negotiate in good faith." In response to the DRPA's contention that there was no public agency designated to oversee the negotiations, he held that the court had "the inherent power to deal with matters of that nature."

Six months later, plaintiffs filed a motion for summary judgment on count one of their amended complaint which sought a declaratory judgment that the DRPA had violated the New Jersey constitutional guarantee of public employees to organize and parallel legislation of both states recognizing and implementing this right. They requested an order requiring the parties to negotiate an impasse-resolution procedure featuring interest arbitration under court supervision. Plaintiffs contended this relief was appropriate because New Jersey and Pennsylvania have elected to resolve such impasses by public interest arbitration. In support of their motion, plaintiffs submitted a certification of Clyde W. Summers, the Jefferson B. Fordham Professor Emeritus at the Law School of the University of Pennsylvania, who opined that interest arbitration between public employees and public employers was appropriate and desirable. He also offered an analytical framework to determine whether two states have similar and complementary policies on collective bargaining by police officers and dealing with impasses. Finally, he offered the opinion that the New Jersey and Pennsylvania statutory schemes were "substantially the same."

Defendant responded with a cross-motion for summary judgment or, in the alternative, a motion to strike the Summers report. Substantively, the DRPA argued that not only the policies must be similar but also "the actual legislation" must be similar. The DRPA also contended that requiring it to submit to binding interest arbitration would interfere with the Compact's provision for the Governor's right to veto any action and thus would violate the Supremacy Clause of the United States Constitution.

Prior to ruling on the cross-motions, Judge Vogelson requested the parties "to make one additional attempt to resolve your dispute voluntarily" by reaching an agreement on the terms and conditions of an agreement or on the procedure to resolve an impasse. When the parties failed to reach any agreement, Judge Vogelson proceeded to grant plaintiffs' motion for summary judgment and deny the DRPA's cross-motion. At that time, Judge Vogelson rendered his opinion on the pending summary judgment motions.

Initially, he found that Professor Summers was "a highly qualified expert." He also accepted Professor Summers' opinion "as having credibility and substance."[3] In addition, he stated that Judge Supnick's prior ruling concerning the complementary nature of the New Jersey and Pennsylvania laws governing public employer collective bargaining was the law of the case.

Judge Vogelson also relied on *International Union of Operating Eng'rs, Local 68 v. Delaware River and Bay Auth.*

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3. Defendant correctly argues that a trial court should not rely upon expert opinions on New Jersey law. *Healy v. Fairleight Dickinson Univ.*, 287 *N.J.Super.* 407, 413, 671 A.2d 182 (App.Div.), *certif. denied*, 145 *N.J.* 372, 678 A.2d 713, *cert. denied*, 519 U.S. 1007, 117 *S.Ct.* 510, 136, *L.Ed.*2d 399 (1996); *State v. Grimes*, 235 *N.J.Super.* 75, 80, 561 A.2d 647 (App.Div.), *certif. denied*, 118 *N.J.* 222, 570 A.2d 976 (1989). Judge Vogelson's acceptance of the Summers opinion does not require a reversal because his decisions, particularly on the motion for reconsideration, reveal an independent review of each statutory scheme and an independent determination of the complementary and parallel nature. Furthermore, Summers and Weinstein did offer an opinion on the law of another state, which may be an appropriate subject of expert testimony. *Grimes, supra; Max v. Max*, 123 *N.J.L.* 580, 589, 10 A.2d 163 (Sup.Ct.), *aff'd o.b.*, 125 *N.J.L.* 271, 15 A.2d 616 (E. & A. 1940).

(Local 68), 147 *N.J.* 433, 688 A.2d 569, *cert. denied*, ____ *U.S.* ____, 118 *S.Ct.* 165, 139 *L.Ed.*2d 108 (1997), in which the Court required defendant, a bi-state agency of New Jersey and Delaware, to recognize and engage in collective negotiations with plaintiff union, since the statutes of the two states authorizing collective bargaining for public employees were substantially similar.

Judge Vogelson reasoned that the members of plaintiff Lodge 30 were police officers who patrolled in both New Jersey and Pennsylvania, enforced the laws of both states, and were subject to the same dangers as other police officers. Since both New Jersey and Pennsylvania "provide for a procedure in just this type of case," the DRPA should also. Judge Vogelson also concluded he had the authority to order interest arbitration. Nevertheless, he did not do so; he decided that the parties should select and meet with a mediator "from a list to be provided by the American Arbitration Association [AAA] in accordance with that Agency's rules and regulations," to develop "a procedure and mechanism by which they can resume good faith negotiations."

On November 21, 1997, an order was entered granting plaintiffs' motion for summary judgment on count one of their amended complaint, and denying defendant's cross-motion. The parties were ordered to select a mediator from an AAA list, and to report to the court on their progress; the order recited that "[i]f the [p]arties remain at impasse the Court can and will order binding interest arbitration."

Defendant filed a notice of motion for reconsideration dated December 5, 1997. In support of its motion, defendant submitted (1) a December 4, 1997 certification of Joy Faber, its assistant general counsel; (2) Summers' deposition of November 18, 1997; and (3) an undated opinion of its expert David Weinstein, Professor Emeritus at Temple University School of Law. Defendant's expert, Weinstein, had experience as a public interest arbitrator in Connecticut and Pennsylvania and had served as a fact finder in the 1970s for the Connecticut State Board of Mediation and Arbitration. Like Summers, Weinstein compared the New Jersey Employer-Employee Relations Act, *N.J.S.A.* 34:13A-1 to -29, with Pennsylvania

Act 111, *Pa. Stat. Ann.* tit. 43, §§ 217.1 to .10 (West 1999) (Act 111), but Weinstein disagreed with Summers' conclusion that the two acts were substantially similar.

Prior to disposition of this motion, on December 19, 1997, Judge John Fratto entered an order requiring defendant to appropriate funds for one-half of the AAA mediator's fee for three sessions, pursuant to the AAA's Grievance Mediation Rules, in order to implement Judge Vogelson's order. Judge Fratto's order also dismissed count two of the amended complaint (breach of contract), denied defendant's request to file an additional expert report, and adjourned the return date of defendant's motion for reconsideration.

Following oral argument, Judge Vogelson rendered an oral opinion on January 23, 1998. He acknowledged that he recognized Summers as an expert, but made it "clear for the record" that he read and compared the statutes of New Jersey and Pennsylvania, and found that, despite "some differences between them," they were substantially similar, complementary and parallel "in the context of this case."

The judge reviewed Weinstein's opinion and described it as "narrower, more technical and precise." The judge noted that Summers addressed the policies of the two statutes, while Weinstein emphasized their "terms of implementation," but "they both agree on the purpose of the legislation." Declining to discuss each difference between the statutes raised by Weinstein, the motion judge concluded that "simplistically the policy is dispute resolution without strike, providing a vehicle by which that can be done. . . . [T]hey are substantially similar for that purpose." The judge reasoned that the differences between the statutes did not change this policy.

Furthermore, Judge Vogelson rejected defendant's argument that his decision negated the Governor's veto power, since the parties were free to agree on a procedure that did not involve the expenditure of funds. The judge also noted that "at this juncture, we don't even know whether there will be interest arbitration." If at some time defendant "is prohibited from spending funds . . . that will be presented to the Court and another decision will be made."

On February 17, 1998, an order was entered denying the motion for reconsideration. On that same date defendant filed a timely notice of appeal from this order and the orders of November 21 and December 19, 1997.[4]

On appeal, the DRPA contends, and State of New Jersey as *amicus curiae* concurs, that the imposition of mediation and binding arbitration violates its right to manage its own affairs in accordance with the Compact.

The DRPA argues that a bi-state compact, approved by Congress under the Compact Clause, *U.S. Const.* art. I, § 10, cl. 3, becomes a law of the United States. *Cuyler, supra,* 449 *U.S.* at 440, 101 *S.Ct.* at 708, 66 *L.Ed.*2d at 649. The DRPA cites the Supremacy Clause, which provides that the laws of the United States "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." *U.S. Const.* art. VI, cl. 2. It reasons that, as law of the United States, the clear mandate of *N.J.S.A.* 32:3-5(e), authorizing defendant to establish the duties and compensation of its employees, must be enforced.

The DRPA also contends, again with support from *amicus,* that the imposition of mediation and arbitration upon it interferes with the policy-making authority of the New Jersey and Pennsylvania Legislatures, and the authority of the New Jersey Governor to veto the action of any of defendant's New Jersey commissioners. *N.J.S.A.* 32:3-4. Defendant cites *N.J. Const.* art. III, ¶1, which divides the powers of government into the legislative, executive and judicial branches, and provides: "No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution."

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4. Arguably, the February 17, 1998 order is interlocutory because the parties have not been ordered to submit their dispute to public interest arbitration. However, given the public importance of this issue and the need for guidance to the parties involved in this dispute, we proceed to address the merits of the legal issues before us. *Delaware River and Bay Auth. v. International Org. of Masters, Mates & Pilots* (*International Org.*), 45 *N.J.* 138, 142, 211 A.2d 789 (1965).

The DRPA also argues that only "the adoption by both Compact States of nearly identical State legislation expressly intended to apply to [defendant]" may change the Compact and establish binding interest arbitration.

The DRPA is a public corporate body of two states: New Jersey and Pennsylvania. *Eastern Paralyzed Veterans, supra,* 111 *N.J.* at 398, 545 A.2d 127; *Yancoskie v. Delaware River Port Auth.,* 155 *N.J.Super.* 1, 4, 382 A.2d 77 (App.Div. 1977), *aff'd,* 78 *N.J.* 321, 395 A.2d 192 (1978); *see also Yancoskie v. Delaware River Port Auth.,* 478 Pa. 396, 387 A.2d 41 (1978). Thus, neither creator state can unilaterally impose additional duties, powers or responsibilities upon the DRPA. *Eastern Paralyzed Veterans, supra; Bell v. Bell,* 83 *N.J.* 417, 424-25, 416 A.2d 829 (1980); *Nardi v. Delaware River Port Auth.,* 88 *Pa.Cmwlth.* 558, 490 A.2d 949, 950 (1985). For single state jurisdiction to be exercised over the DRPA, there must be complementary state legislation. *Eastern Paralyzed Veterans, supra; Nardi, supra.*

Among its many powers, the DRPA has the power

> (e) to appoint, hire or employ . . . such other officers and such agents and employees as it may require for the performance of its duties, by contract or otherwise, and fix and determine their qualifications, duties and compensation.
>
> [*N.J.S.A.* 32:3-5(e).]

The DRPA is also empowered

> (n) To exercise all other powers not inconsistent with the constitutions of the two States or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, . . . and generally to exercise in connection with its property and affairs, and in connection with property within its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.
>
> [*N.J.S.A.* 32:3-5(n).]

Further, the DRPA also has been bestowed with

> such additional powers as may hereafter be delegated to or imposed upon it from time to time by the action of either State concurred in by legislation of the other.
>
> [*N.J.S.A.* 32:3-5.]

Although the DRPA contends it is not obliged to recognize Lodge 30 as the representative of its police officers or to negotiate with Lodge 30 or its members, it concedes that it has recognized Lodge 30 as the bargaining agent and has entered agreements over a twenty year period with Lodge 30 as the representative of the police officers. The DRPA contends, however, that these voluntary acts do not provide any basis to impose on it the impasse-resolution procedures applicable to public employers in New Jersey to resolve the current impasse between it and its police officers.

Although neither of the creator states of a bi-state agency may "unilaterally impose its legislative will on the bi-state agency," *Bunk v. Port Auth. of New York and New Jersey,* 144 *N.J.* 176, 184, 676 A.2d 118 (1996), "the agency may be subject to complementary or parallel state legislation." *Ibid.* (citation omitted). This parallel or complementary legislation need not be nearly identical and specifically apply to the agency. Rather, the public policy of both states, articulated in parallel statutes that are substantially similar but do not specifically include defendant, is applicable to a bi-state agency, although the statutory scheme of each state is not. This concept was explained in *Local 68* in the following passage:

> Although a single state may not unilaterally impose its will on a bi-state agency, the creator states together may subject the agency to complementary or parallel state legislation. Separate legislative acts are complementary or parallel if they are substantially similar in nature. Legislation is substantially similar if the creator states evidence some showing of agreement in the laws involving and regulating a bi-state agency.
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> [*Local 68, supra,* 147 *N.J.* at 445, 688 A.2d 569 (citing *Eastern Paralyzed Veterans, supra,* 111 *N.J.* at 400-02, 545 A.2d 127).]

The New Jersey Supreme Court first applied this theory in *International Org., supra,* 45 *N.J.* at 147, 211 A.2d 789, to restrain a union from striking against a bi-state agency. The Court relied on the "historic and widely prevailing policy against strikes by public employees" which was "equally applicable in both states," although this policy was not expressed in any legislation. *Ibid.*

Eastern Paralyzed Veterans, supra, 111 *N.J.* at 391, 545 A.2d 127, involved the proposed construction in New Jersey of a mass transit terminal for train service to be operated by a subsidiary of the DRPA. The New Jersey Department of Community Affairs, which had to approve the construction plans, requested an elevator for the handicapped; plaintiff contended that the elevator was required under New Jersey law. *Id.* at 394-96, 545 A.2d 127.

The Court determined that New Jersey could not impose duties or responsibilities on a bi-state agency unauthorized by its Compact, unless there was "complementary state legislation" in each state. *Id.* at 398-99, 545 A.2d 127. The Court thus remanded to determine whether Pennsylvania would have required an elevator if the terminal had been built there. *Id.* at 400-02, 545 A.2d 127. The Court did not require that the Pennsylvania and New Jersey laws expressly provide that they applied to the DRPA. *Id.* at 400-01, 545 A.2d 127.

In *Ballinger v. Delaware River Port Auth.,* 311 *N.J.Super.* 317, 709 A.2d 1336 (App.Div.1998), this court affirmed the dismissal of plaintiff's complaint seeking relief pursuant to the Conscientious Employee Protection Act (CEPA), *N.J.S.A.* 34:19-1 to -8. We recognized that the statutes enacted by both states governing the same subject matter need not be identical. *Id.* at 324-25, 709 A.2d 1336. However, we identified four differences between the New Jersey legislation and the Pennsylvania Whistleblower Law. *Pa. Stat. Ann.* tit. 43, §§ 1421 to 1428 (West 1999), which militated against a conclusion that the acts were substantially similar. *Id.* at 327-28, 709 A.2d 1336. Those differences—CEPA covers public and private employers while the Whistleblower Law covers public employers, a different statute of limitations, a right to trial by jury in New Jersey but a bench trial in Pennsylvania, and a right to puni-

tive damages in New Jersey and compensatory damages in Pennsylvania—were so substantial that this court concluded that New Jersey and Pennsylvania are not in agreement over the applicability of CEPA or the Whistleblower Law to the DRPA. *Ibid.*

By contrast, in *Bunk, supra,* 144 *N.J.* at 181, 676 A.2d 118, an employee of the Port Authority of New York and New Jersey, a bi-state agency of New York and New Jersey, was injured while working, resulting in disability, and received a disability retirement pension from defendant. He also sought workers' compensation in New Jersey. *Ibid.* As defendant points out, the agency had agreed to provide workers' compensation benefits. *Id.* at 185, 676 A.2d 118. The Court held that *N.J.S.A.* 34:15-43, which limited workers' compensation benefits of a public employee who was receiving a disability pension for the same injury, applied, even though it did not specify that it applied to defendant. *Id.* at 180, 676 A.2d 118.

Notably, the Court declined to "decide the exact contours of New York law" on the subject. *Id.* at 185, 676 A.2d 118. Rather, it concluded that "the provisions are somewhat similar" and both "reflect a plan to coordinate disability benefits." *Ibid.* This facial similarity was enough to constitute parallel or complementary legislation of both states.

In *Local 68, supra,* 147 *N.J.* at 439, 688 A.2d 569, a union sought to require the Delaware River and Bay Authority (DRBA), a bi-state agency of New Jersey and Delaware, to recognize it as the employees' representative and engage in collective negotiations. The Compact under consideration had a clause similar to *N.J.S.A.* 32:3-5(e), giving defendant the power to appoint employees, to fix and determine their duties, compensation, and terms and conditions of employment. *Id.* at 438, 688 A.2d 569. In addition, the Appellate Division had previously ruled that New Jersey's Public Employment Relations Commission (PERC) did not have jurisdiction over the DRBA. *Delaware River & Bay Auth. v. New Jersey Pub. Employment Relations Comm'n (PERC),* 112 *N.J.Super.* 160, 166, 270 A.2d 704 (App.Div.1970), *aff'd o.b.,* 58 *N.J.* 388, 277 A.2d 880 (1971). Nevertheless, the Court in *Local 68* granted the right to recognition and collective negotiation following

the provisions of the New Jersey and Delaware statutes governing collective negotiations for public employees, neither of which specified that it applied to defendant, and concluded that, "although not identical" they were "complementary and parallel." *Local 68, supra,* 147 *N.J.* at 447, 688 A.2d 569.

Our review of each state's enactments governing police and fire labor relations, the New Jersey Police and Fire Public Interest Arbitration Reform Act (*N.J.S.A.* 34:13A-14a to -29) and the Pennsylvania Collective Bargaining by Policemen or Firemen Act (*Pa. Stat. Ann.* tit. 43 §§ 217.1 to .10 (West 1999)) (Act 111), reveals that each state has made a policy decision in favor of public interest arbitration for police officers. Certainly, there are some differences in each scheme. For example, in New Jersey, [a]rbitration shall be limited to those subjects that are within the required scope of collective negotiations, except that the parties may agree to submit to arbitration one or more permissive subjects of negotiation." *N.J.S.A.* 34:13A-16f(4). A subject is negotiable if it "intimately and directly affects the work and welfare" of the employees; has not been preempted by statute or regulation; and "a negotiated agreement would not significantly interfere with the determination of governmental policy." *In re Local 195,* 88 *N.J.* 393, 404, 443 A.2d 187 (1982). "To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer." *Id.* at 404-05, 443 A.2d 187.

In Pennsylvania also, "the terms and conditions" of employment are proper subjects of negotiation, *Pa. Stat. Ann.* tit. 43, § 217.1 (West 1999), and arbitration. *Police Bargaining Unit of Montoursville Police Dep't v. Borough of Montoursville,* 160 *Pa.Cmwlth.* 333, 634 A.2d 830, 832 (1993), *appeal denied,* 540 *Pa.* 635, 658 A.2d 798 (1995). As in New Jersey, an arbitrator may not require the performance of an act that is prohibited by law. *Ibid.* Contrary to defendant's view, as in New Jersey, "matters of inherent managerial policy" are not subject to arbitration under Act 111. *Id.* at 833-34 (concluding that the strength of the police force was not arbitrable).

Defendant cites *Township of Upper Saucon v. Pennsylvania Labor Relations Bd.*, 152 *Pa.Cmwlth.* 530, 620 A.2d 71, 74 (1993), in which the court rejected the argument that Pennsylvania law requires the balancing of an employer's "managerial purposes and objectives in order to determine whether the subject at issue is rationally related to employees' duties." *Amicus* concurs that Pennsylvania "would allow a decision that does not take into account the public interest." However, the court in *Upper Saucon, supra,* holding that the implementation of a new steady shift schedule for police officers was a mandatory subject of bargaining under Act 111, explained that management objectives are properly considered, and " 'a managerial policy concern must *substantially outweigh* any impact an issue will have on the employe[e]s for that issue to be deemed a managerial prerogative.' " *Ibid.* (quoting the proposed decision and order of the hearing examiner). *See also Frackville Borough Police Dep't v. Pennsylvania Labor Relations Bd.*, 701 A.2d 632, 634-35 (Pa.Commw.Ct.1997), *appeal denied,* 551 *Pa.* 706, 712 A.2d 287 (1998) (choice of a pension plan manager is within managerial policy exception to collective bargaining).

Furthermore, arbitrators appointed in New Jersey and Pennsylvania must consider similar factors. New Jersey lists eight factors which the arbitrator or panel of arbitrators must consider: (a) the interests and welfare of the public; (b) a comparison of the wages and other conditions of employment of the employees in issue to those of other public and private employees performing the same or similar work; (c) the employees' current overall compensation; (d) the parties' stipulations; (e) the employer's lawful authority; (f) the financial impact on the governing unit, its residents and taxpayers; (g) the cost of living; and (h) the continuity and stability of employment. *N.J.S.A.* 34:13A-16g.

Pennsylvania's Act 111 does not require the arbitrators to consider any specific criteria. However, as plaintiffs point out, other Pennsylvania statutes, The Municipalities Financial Recovery Act (*Pa. Stat. Ann.* tit 53, §§ 11701.101 to .501 (West 1999)) and the Intergovernmental Cooperation Authority Act for Cities of the First Class (*Pa. Stat. Ann.* tit. 53, §§ 12720.101

to .709 (West 1999)), require police and fire public interest arbitrators to consider the financial impact on distressed municipalities. Furthermore, the factors enumerated in the New Jersey legislation are simply a codification of the factors any competent public interest arbitrator would apply.

Although we discern some differences in each state's legislation governing public employer-employee labor disputes, we conclude that these differences do not negate the basic public policy of each state that their public employees are entitled to engage in collective negotiations with their employer. The discrepancies are not so significant to render the two statutory schemes substantially dissimilar. Thus, the New Jersey statutes and the Pennsylvania statutes are complementary and parallel.

We are also not concerned that by ordering mediation and public interest arbitration, if necessary, the trial court is venturing into an area usually reserved to a specialized agency. This concern arises because PERC does not have jurisdiction of the DRPA. *See PERC, supra,* 112 *N.J.Super.* at 162, 270 A.2d 704. A similar argument was raised and rejected in *Local 68.* There, Justice Pollock stated:

> Nor do we share the dissent's lack of confidence in the ability of the Chancery Division to interpret labor law. . . . Historically, courts have exercised equitable power to resolve labor disputes. *See e.g., Local No. 11 of Int'l Ass'n of Bridge, Structural & Ornamental Ironworkers v. McKee,* 114 *N.J. Eq.* 555, 169 A. 351 (Ch. Ct.1933) (appointing receiver to manage union's business until members could elect new officers); *Fryns v. Fair Lawn Fur Dressing Co.,* 114 *N.J. Eq.* 462, 168 A. 862 (Ch. Ct.1933) (holding Chancery Court had jurisdiction and that employer could not force employees to join a particular union). . . . At some time, the New Jersey and Delaware Legislatures may adopt legislation designating an agency to resolve "the myriad of issues that will arise during the course of collective negotiations." [Douglas L. Leslie, ed., *The Railway Labor Act* 7 (BNA Books 1995)]. Until such time as the legislatures make such a

designation, however, the absence of such legislation does not deprive the [court] of jurisdiction.

[*Local 68, supra,* 147 *N.J.* at 448, 688 A.2d 569.]

This reasoning is no less applicable in this case.

Finally, we reject defendant's and *amicus'* argument that the order to require mediation and possibly public interest arbitration usurps the veto power bestowed on the Governor of New Jersey. *N.J.S.A.* 32:3-4. However, the Compact specifically recognizes that the legislatures of both states may delegate or impose additional powers on the DRPA. *N.J.S.A.* 32:3-5. Furthermore, the Governor's veto power is a check on the actions of the DRPA rather than an affirmative grant to thwart public policy.

Accordingly, we affirm the order requiring the DRPA to mediate and, if necessary, submit to public interest arbitration its contract dispute with Lodge 30.

Affirmed.

APPENDIX B

FRATERNAL ORDER OF POLICE, PENN-JERSEY LODGE 30, and JOSEPH VENA,	SUPERIOR COURT OF NEW JERSEY CAMDEN COUNTY LAW DIVISION
Plaintiffs,	DOCKET NO. L-7547-96 CIVIL ACTION
v.	**JUDGMENT ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION AND/OR TO ALTER OR AMEND JUDGMENT, AND STAY ALL PROCEEDINGS**
DELAWARE RIVER PORT AUTHORITY, *Defendant.*	BEFORE: THE HONORABLE M. ALLAN VOGELSON, P.J.S.C.

This matter having been opened to the Court by Blank Rome Comisky & McCauley LLP, Counsel to Defendant Delaware River Port Authority for an Order Granting Its Motion For Reconsideration And/Or To Alter Or Amend Judgment, And Stay All Proceedings, and opposed by Plaintiffs' Counsel Spear, Wilderman, Borish, Endy, Spear and Runckel, and the Court having considered the papers and argument of Counsel:

It is this 17th day of February, 1998, for the reasons set forth in my January 23, 1998 bench opinion, HEREBY ORDERED THAT:

(1) Defendant's Motion For Reconsideration And/Or To Alter Or Amend Judgment, and Stay All Proceedings is denied; thus;

(2) The Court's Order of November 21, 1997 continues in full force and effect; and

(3) The Court's Order of December 19, 1997 remains in full force and effect (as subsequently modified by Court postponing the action to be taken by the Commissioners set out in Paragraph 1 until the February or the next regularly scheduled meeting of the DRPA Commissioners).

/s/ M. Allan Vogelson

M. Allan Vogelson, P.J.S.C.

APPENDIX C

FOP, LODGE 30 and VENA,	SUPERIOR COURT OF NEW JERSEY CAMDEN COUNTY
Plaintiffs,	LAW DIVISION
v.	DOCKET NO. L-7547-96
DELAWARE RIVER PORT AUTHORITY,	CIVIL ACTION
Defendant.	**ORDER**

THIS MATTER having been opened to the Court by the Parties by telephone conferences held before the Honorable M. Allan Vogelson, P.J.S.C., on the 10th and 12th days of December, 1997, and Judge Vogelson having heard and considered the arguments of both parties through their attorneys, and both parties having advised the Court that the following reflects Judge Vogelson's Rulings; and the Court having had the opportunity to confer with Judge Vogelson's Chambers:

In Judge Vogelson's absence, IT IS on this 19th day of December, 1997, ORDERED that:

1. At their next regularly scheduled meeting, the Commissioners of the Defendant Delaware River Port Authority ("DRPA") shall appropriate funds to equally share the American Arbitration Association ("AAA") mediator's fees with the Plaintiffs for the first three (3) mediation sessions, as set out in the Grievance Mediation Rules of the AAA, in order to carry out the Court's Order of November 21, 1997, directing the parties to proceed to Mediation before the AAA;

2. The DRPA Motion to Stay all proceedings pending the Court's consideration of the DRPA's Motion for Reconsideration, etc., filed on December 5th, 1997, is denied;

3. Count II of Plaintiff's Amended Complaint is withdrawn with Prejudice;

4. The DRPA request to file an additional report, proffered as an "expert report", in connection with its Motion For Reconsideration, etc. is denied; and

5. The Return Date for the DRPA's Motion for Reconsideration is adjourned until January 23, 1997.

/s/ John A. Fratto, J.S.C.

JOHN A. FRATTO, J.S.C.

APPENDIX D

FRATERNAL ORDER OF POLICE, PENN-JERSEY LODGE 30, and JOSEPH VENA,	: SUPERIOR COURT OF : NEW JERSEY : CAMDEN COUNTY : LAW DIVISION
Plaintiffs,	: DOCKET NO. L-7547-96 : CIVIL ACTION
v.	: **JUDGMENT ORDER : GRANTING PLAINTIFFS' : MOTION FOR SUMMARY : JUDGMENT ON COUNT I**
DELAWARE RIVER PORT AUTHORITY,	: **OF THE AMENDED : COMPLAINT**
Defendant.	: BEFORE: : THE HONORABLE : M. ALLAN VOGELSON, : P.J.S.C.

This matter having been opened to the Court by Spear, Wilderman, Borish, Endy, Spear and Runckel, attorneys for Plaintiffs, Fraternal Order of Police, Penn-Jersey Lodge 30 and Joseph Vena, for an Order Granting Plaintiffs' Motion for Summary Judgment on Count I of the Amended Complaint, and by Blank Rome Comisky & McCauley, attorneys for Defendant, the Delaware River Port Authority, for an Order Granting Defendant's Cross-Motion for Summary Judgment on Plaintiffs' Amended Complaint, or in the Alternative to Strike Plaintiffs' Proffered Expert Testimony or to Continue the Motion in order that the DRPA may submit additional affidavits, take discovery of Plaintiffs' expert or submit its own expert testimony, and the Court, having considered the papers and the argument of counsel.

It is this 21st day of November, 1997, for the reasons set forth in my November 3, 1997 bench opinion, **HEREBY ORDERED THAT:**

(1) Plaintiffs' Motion for Summary Judgment on Count I of the Amended Complaint, filed June 13, 1997, is **GRANTED** as follows: (a) The Parties shall select a mediator from a list supplied by the American Arbitration Association to develop a procedure and mechanism to resume good faith negotiations and arrive at an agreement over the terms and conditions of employment for DRPA police officers; (b) On December 3, 1997, at 1:30 p.m. the Parties shall appear before the Court to report on the progress of the above mediation; (c) If the Parties remain at impasse the Court can and will order binding interest arbitration.

(2) Defendant's Cross-Motion for Summary Judgment on Plaintiffs' Amended Complaint, or in the Alternative to Strike Plaintiffs' Proffered Expert Testimony or to Continue the Motion in order that the DRPA may submit additional affidavits, take discovery of Plaintiffs' expert or submit its own expert testimony, filed on July 15, 1997, is **DENIED**;

(3) Defendant's Motion for a Stay of this Order, made orally to the Court on November 3, 1997, is **DENIED;**

(4) The Court certifies this Judgment Order as Final for purposes of Appeal pursuant to Rule 4:42-2.

/s/ M. Allan Vogelson

M. Allan Vogelson, P.J.S.C.

APPENDIX E

FRATERNAL ORDER OF POLICE, *et al.*,	: SUPREME COURT OF NEW JERSEY
	: C-413 September Term 1999
Plaintiffs-Respondents,	: 48,489
	: CORRECTED ORDER
v.	: ON PETITION FOR CERTIFICATION
DELAWARE RIVER PORT AUTHORITY,	: FILED DEC 08 1999 Stephen Townsend
Defendant-Petitioner.	: CLERK

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-3344-97 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs; and it is further

ORDERED that the appeal filed in the within matter is dismissed pursuant to Rule 2:12-9

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 7th day of December, 1999.

/s/ Stephen Townsend
CLERK OF THE SUPREME COURT OF NEW JERSEY

APPENDIX F

PUBLIC RESOLUTION S.J. RES. 41
CHAPTER 258 — June 14, 1932
47 STAT. 308*

JOINT RESOLUTION

Granting consent of Congress to a compact or agreement between the commonwealth of Pennsylvania and the State of New Jersey creating the Delaware River Joint Commission and specifying the powers and duties thereof.

Whereas, pursuant to act numbered 200 of the Commonwealth of Pennsylvania, approved June 12, 1931, and chapter 391 of the Laws of New Jersey, approved June 30, 1931, the Commonwealth of Pennsylvania and the State of New Jersey have entered into a certain compact or agreement, which said compact or agreement has been duly executed and delivered by the governor of the Commonwealth of Pennsylvania on behalf of said Commonwealth, and by the New Jersey Interstate Bridge Commission on behalf of said State; and

Whereas the aforesaid agreement or compact is in substantially the following form, that is to say:

"Whereas the Commonwealth of Pennsylvania and the State of New Jersey are the owners of a certain bridge across the Delaware River between the city of Philadelphia in the Commonwealth of Pennsylvania and the city of Camden in the State of New Jersey; and

"Whereas the Pennsylvania Commission, existing by virtue of act numbered 338 of the Commonwealth of Pennsylvania, approved July 9, 1919 (Pamphlet Laws, 814), and acts amendatory thereof and supplementary thereto, and the New Jersey Interstate Bridge Commission, existing by virtue of chapter 271 of the Laws of New Jersey of 1929, and acts amendatory thereof and supplementary thereto, are acting

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* Articles I through XII of the Compact are also found at N.J.S.A. 32:3-2-13. Article XIII of the Compact is also found at N.J.S.A. 32:3-13.23.

Articles I through XIII of the Compact are also found at 36 P.S.A. § 3503.

jointly under the name of the Delaware River Bridge Joint Commission in connection with the operation and maintenance of said bridge; and

"Whereas the interests of the people of the two States will be best served by consolidating the two commissions in corporate form, and granting additional powers and authority thereto with reference to the said bridge, and to other and further means of communication between the two States in the vicinity of Philadelphia and Camden; and

"Whereas additional transportation facilities between the two States in the vicinity of Philadelphia and that part of New Jersey opposite thereto will be required in the future for the accommodation of the public and the development of both States; and

"Whereas both States have mutual interests in the development of the Delaware River from Philadelphia and Camden to the sea, and particularly in developing the facilities and promoting the more extensive use of the ports of Philadelphia and Camden by coastwise, intercoastal, and foreign vessels; and

"Whereas it is highly desirable that there be a single agency of both States empowered to further the aforesaid interests of both States: Now, therefore

"The Commonwealth of Pennsylvania and the State of New Jersey do hereby solemnly covenant and agree each with the other, as follows:

"ARTICLE I

"There is hereby created a body corporate and politic to be known as the Delaware River Joint Commission (hereinafter in this agreement called the 'Commission'), which shall constitute the public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey for the following public purposes, and which shall be deemed to be exercising an essential governmental function in effectuating such purposes, to wit:

"(a) The operation and maintenance of the bridge owned jointly by the two States and the city of Philadelphia, as its interests may appear, across the Delaware River between the

city of Philadelphia in the Commonwealth of Pennsylvania and the city of Camden in the State of New Jersey, including its approaches, and the making of additions and improvements thereto.

"(b) The effectuation, establishment, construction, operation, and maintenance of railroad or other facilities for the transportation of passengers across the said bridge, including extensions thereof to the vicinity of Race Street and Eighth Street in the city of Philadelphia, and to the vicinity of Carman Street and Haddon Avenue in the city of Camden.

"(c) The investigation of the necessity for additional means of communication between the Commonwealth of Pennsylvania in the vicinity of Philadelphia and the State of New Jersey opposite thereto, and between the ports of Philadelphia and Camden and the sea, and making of such studies, surveys, and estimates as may be necessary to determine the feasibility and cost of any such additional means of communication, whether the same be by bridge, tunnel, canal, or otherwise.

"(d) Cooperation with all other bodies interested or concerned with or affected by the promotion, development, or use of the Delaware River.

"(e) The procurement from the Government of the United States of any consents which may be requisite to enable any project within its powers to be carried forward.

"(f) The promotion of the Delaware River as a highway of commerce between Philadelphia and Camden and the sea.

"(g) The promotion of increased commerce on the Delaware River, both freight and passenger, and, for this purpose, the publication of such literature and the adoption of such means as may be deemed appropriate.

"(h) To study and make recommendations to the proper authorities for the improvement of terminal, lighterage, wharfage, warehouse, and other facilities necessary for the promotion of commerce on the Delaware River.

"(i) Institution, through the attorneys general of Pennsylvania and New Jersey, of or intervention in any litigation involving rates, preferences, rebates, or other matters vital to the interests of the ports of the Delaware River.

"(j) Any other functions which may be of mutual benefit to the Commonwealth of Pennsylvania and the State of New Jersey, in so far as concerns the promotion and development of the ports of Philadelphia and of Camden, and the use by commercial vessels of their facilities.

"ARTICLE II

"The commission shall consist of sixteen commissioners, eight resident voters of the Commonwealth of Pennsylvania, and eight resident voters of the State of New Jersey, who shall serve without compensation.

"The first eight commissioners for the Commonwealth of Pennsylvania shall be the governor of the Commonwealth, the auditor general, the State treasurer, the mayor of the city of Philadelphia, and the four additional persons now serving as members of the Pennsylvania Commission, existing by virtue of act numbered 338 of the Commonwealth of Pennsylvania, approved July 9, 1919 (Pamphlet Laws, 814), and acts amendatory thereof and supplementary thereto.

"The first eight commissioners for the State of New Jersey shall be the eight individuals now holding office, as members of the New Jersey Interstate Bridge Commission, existing by virtue of chapter 271 of the laws of said State of 1929, approved May 6, 1929, and acts amendatory thereof and supplementary thereto, which said eight individuals are hereby appointed by said State as such commissioners, who shall serve for their unexpired terms as members of the New Jersey Interstate Bridge Commission. Succeeding commissioners shall be elected by the legislature to serve for terms of five years.

"For the Commonwealth of Pennsylvania, the governor, the auditor general, the State treasurer, and the executive head of the city of Philadelphia, in office at the time, shall always be members of the commission, and, in addition thereto, there shall be four members appointed by the governor, who shall be known as appointive members. Whenever a vacancy occurs in the appointive membership of the commission, the governor shall appoint a member to serve for a term of five years from the date of his appointment.

"For the State of New Jersey, whenever a vacancy in the office of commissioner shall occur, such vacancy shall be filled for the unexpired term by the legislature. If the legislature shall not be in session when the vacancy occurs, such vacancy shall be filled by the governor, and such appointee shall hold office until the legislature convenes.

"All commissioners shall continue to hold office after the expiration of the terms for which they are appointed or elected unless and until their respective successors are appointed and qualified, but no period during which any commissioner shall hold over shall be deemed to be an extension of his term of office for the purpose of computing the date on which his successor's term expires.

"ARTICLE III

"The commissioners shall have charge of the commission's property and affairs, and shall, for the purpose of doing business, constitute a board, but no action of the commissioners shall be binding unless a majority of the members of the commission from Pennsylvania and a majority of the members of the commission from New Jersey shall vote in favor thereof.

"ARTICLE IV

"For the effectuation of its authorized purposes, the commission is hereby granted the following powers:

"(a) To have perpetual succession.

"(b) To sue and be sued.

"(c) To adopt and use an official seal.

"(d) To elect a chairman, vice chairman, secretary, and treasurer, and to adopt suitable by-laws for the management of its affairs. The secretary and treasurer need not be members of the commission.

"(e) To appoint such other officers, and such agents and employees as it may require for the performance of its duties, and fix and determine their qualifications, duties, and compensation.

"(f) To enter into contracts.

"(g) To acquire, own, hire, use, operate, and dispose of personal property.

"(h) To acquire, own, use, lease, operate, and dispose of real property and interests in real property, and to make improvements thereon.

"(i) To grant the use of, by franchise, lease, or otherwise, and to make charges for the use of, any property or facility owned or controlled by it.

"(j) To borrow money upon its bonds or other obligations either with or without security.

"(k) To exercise the right of eminent domain.

"(l) To determine the exact location, system and character of, and all other matters in connection with, any and all improvements or facilities which it may be authorized to own, construct, establish, effectuate, operate, or control.

"(m) In addition to the foregoing, to exercise the powers, duties, authority, and jurisdiction heretofore conferred and imposed upon the aforesaid Pennsylvania Commission and upon the aforesaid New Jersey Interstate Bridge Commission, severally, or upon both of said commissions jointly, by the Commonwealth of Pennsylvania or the State of New Jersey, or both of the said two States; and

"(n) To exercise all other powers, not inconsistent with the constitutions of the two States or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, except the power to levy taxes or assessments, and generally to exercise, in connection with its property and affairs and in connection with property within its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.

"ARTICLE V

"If for any of its authorized purposes (including temporary construction purposes), the commission shall find it necesary or convenient to acquire any real property in the Commonwealth of Pennsylvania or the State of New Jersey, whether for immediate or future use, the commission may find and determine that such property, whether a fee simple absolute or a lesser interest, is required for public use, and, upon

such determination, the said property shall be deemed to be required for a public use until otherwise determined by the commission, and, with the exceptions hereinafter specifically noted, the said determination shall not be affected by the fact that such property has theretofore been taken for or is then devoted to a public use, but the public use in the hands or under the control of the commission shall be deemed superior to the public use in the hands or under the control of any other person, association, or corporation.

"If the commission is unable to agree with the owner or owners thereof upon terms for the acquisition of any such real property in the Commonwealth of Pennsylvania for any reason whatsoever, then the commission may acquire such real property in the manner provided by act Numbered 338 of the Commonwealth of Pennsylvania, approved July 9, 1919, and acts amendatory thereof and supplementary thereto, for the acquisition of real property by the aforesaid Pennsylvania Commission.

"If the commission is unable to agree with the owner or owners thereof upon terms for the acquisition of any such real property in the State of New Jersey for any reason whatsoever, then the commission may acquire and is hereby authorized to acquire such property, whether a fee simple absolute or a lesser interest, by condemnation or the exercise of the right of eminent domain, either under and pursuant to the provisions of the act of the State of New Jersey, entitled 'An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use' (revision of 1900, approved March 20, 1900), and acts amendatory thereof and supplementary thereto, or under and pursuant to the provisions of an act entitled 'An Act concerning and regulating acquisition and taking of lands by the State of New Jersey, or any agency thereof; providing a procedure therefor, and the manner of making compensation for lands so taken' approved April 21, 1920, and the various acts amendatory thereof and supplementary thereto.

"The power of the commission to acquire real property by condemnation or the exercise of the power of eminent domain in the Commonwealth of Pennsylvania and the State

of New Jersey shall be a continuing power and no exercise thereof shall be deemed to exhaust it.

"The commission and its duly authorized agents and employees may enter upon any land in the Commonwealth of Pennsylvania or the State of New Jersey, for the purpose of making such surveys, maps, or other examinations therefor, as it may deem necessary or convenient for its authorized purposes.

"However, anything to the contrary contained in this compact notwithstanding, no property now or hereafter vested in or held by any county, city, borough, village, township or other municipality or port district shall be taken by the commission without the consent of such municipality or port district unless expressly authorized so to do by the Commonwealth or State in which such municipality or port district is located. All counties, cities, boroughs, villages, townships, and other municipalities, and all public agencies and commissions of the Commonwealth of Pennsylvania, and the State of New Jersey, notwithstanding any contrary provision of law, are hereby authorized and empowered to grant and convey to the commission upon its request, but not otherwise, upon reasonable terms and conditions, any real property which may be necessary or convenient to the effectuation of its authorized purposes, including real property already devoted to public use.

"The Commonwealth of Pennsylvania and the State of New Jersey hereby consent to the use and occupation by the commission of any real property of the said two States, or of either of them, which may be or become necessary or convenient to the effectuation of the authorized purposes of the commission, including lands lying under water and lands already devoted to public use.

"The term 'real property' as used in this compact, includes lands, structures, franchises, and interests in land, including lands under water and riparian rights, and any and all things and rights usually included within the said term, and includes not only fees simple absolute but also any and all lesser interests, such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments, and every

estate, interest, or right, legal or equitable, including terms of years and liens thereon by way of judgments, mortgages, or otherwise, and also claims for damage to real estate.

"ARTICLE VI

"The control, operation, tolls, and other revenues of the aforesaid existing bridge across the Delaware River between the city of Philadelphia and city of Camden, and of all real and personal property's appurtenant thereto or used in connection therewith, shall vest in the commission on the 1st day of July, 1931, and the terms of the members of the aforesaid Pennsylvania Commission and the aforesaid New Jersey Interstate Bridge Commission shall cease and terminate on that date.

"On or before the 30th day of June, 1932, or as soon thereafter as practicable, the commission shall pay to the Commonwealth of Pennsylvania, the State of New Jersey, and the city of Philadelphia the following sums out of moneys, raised by said commission on its bonds or other obligations:

"(a) An amount equal to the moneys contributed by the Commonwealth of Pennsylvania toward the cost of acquiring property for and constructing said bridge and the approaches thereto, and expenditures incident thereto, with interest at the rate of 4 per centum per annum, such interest to be computed from the dates on which installments of such funds were paid to the Delaware River Bridge Joint Commission by the said Commonwealth of Pennsylvania, as shown by the records of its State treasurer, less, however, the amount returned to the Commonwealth of Pennsylvania from the net revenues of the bridge between July 1, 1926, and June 30, 1931, and less interest, at the rate of 4 per centum per annum, upon such amount computed from the dates of repayment to the Commonwealth of Pennsylvania.

"(b) An amount equal to the moneys contributed by the State of New Jersey toward the cost of acquiring property for and contructing said bridge and the approaches thereto, and expenditures incident thereto, with interest theretofore actually paid by the State of New Jersey or accrued upon the bonds issued by said State to borrow money to pay its share of the cost of acquiring property for, and construction of, said

bridge and the approaches thereto, and all expenditures incident thereto, less, however, the amount returned to the State of New Jersey from the net revenues of the bridge between July 1, 1926, and June 30, 1931, and less interest, at the rate of 4¼ per centum per annum, upon such amount computed from the dates of repayment to the State of New Jersey.

"(c) An amount equal to the moneys contributed by the city of Philadelphia toward the cost of acquiring property for and constructing said bridge and the approaches thereto, and expenditures incident thereto, with interest theretofore actually paid by the city of Philadelphia or accrued upon the bonds issued by said city to borrow money to pay its share of the cost of acquiring property for and construction of said bridge and approaches thereto, and all expenditures incident thereto, less, however, the amount returned to the city of Philadelphia from the net revenues of the bridge between July 1, 1926, and June 30, 1931, and less interest, at the rate of 4¼ per centum per annum, upon such amount computed from the dates of repayment to the city of Philadelphia.

"(d) As soon as is practicable subsequently to July 1, 1931, the commission shall determine with the Commonwealth of Pennsylvania, the State of New Jersey, and the city of Philadelphia the net amounts due to each, respectively, as of the 1st day of July, 1931, and from that date until the date of payment interest shall be paid by the commission to the Commonwealth of Pennsylvania at the rate of 4 per centum per annum and to the State of New Jersey and to the city of Philadelphia at the rate of 4¼ per centum per annum.

"(e) The amount payable by the commission to the Commonwealth of Pennsylvania, as aforesaid, shall be paid to the State treasurer of the Commonwealth of Pennsylvania upon a voucher signed and audited by said State treasurer, who is hereby authorized to consummate the said transaction. The amount payable to the State of New Jersey shall be paid to the comptroller of said State upon a voucher signed and audited by said comptroller, who is hereby authorized to consummate the said transaction. The amount payable to the city of Philadelphia shall be paid to the treasurer of the said city upon a voucher signed and audited by said treasurer, who is hereby

authorized to consummate the said transaction. Upon the receipt of the proper payment each of said officials shall certify to the Delaware River Joint Commission that all moneys payable by the Delaware River Joint Commission, to the Commonwealth, State, or city, as the case may be, have been duly paid.

"(f) Nothing herein contained shall be construed to affect, diminish, or impair the rights and obligations created by, or to repeal any of, the provision of chapter 352 of the Laws of New Jersey of 1920, and chapter 262 of the Laws of New Jersey of 1924, and chapter 336 of the Laws of New Jersey of 1926, and chapter 33 of the Laws of New Jersey of 1927, and chapter 64 of the Laws of New Jersey of 1928.

"(g) Of the money paid to the State of New Jersey under the provisions of this agreement, there shall be paid to the sinking fund commission, created by the provisions of the foregoing statutes (chapter 352 of the Laws of New Jersey of 1920 and chapter 262 of the Laws of New Jersey of 1924), such sum or sums as said sinking fund commission may deem necessary to meet the then existing indebtedness and obligations set forth in said statutes, together with such interest and other charges as may be due or may grow due. The amount thus to be paid to the sinking fund commission shall be arrived at and determined by said sinking fund commission within ninety days after payment is made to the State of New Jersey pursuant to the provisions of this agreement. The moneys to be paid to and received by said sinking fund commission are hereby appropriated by the State of New Jersey and are to be used for sinking-fund purposes according to law.

"(h) No failure on the part of the commission to make the aforesaid payments to the Commonwealth of Pennsylvania, to the State of New Jersey, or the city of Philadelphia, shall affect, diminish, or impair the rights of the holders of any bonds or other securities or obligations of said commission, as security for which the tolls and other revenues of the said bridge may be pledged.

"ARTICLE VII

"Notwithstanding any provision of this agreement, the commission shall have no power to pledge the credit of the Commonwealth of Pennsylvania, or the credit of the State of New Jersey, or the credit of any country, city, borough, village, township, or other municipality of said Commonwealth or of said State, or to create any debt of said Commonwealth, or of said State or of such municipality.

"ARTICLE VIII

"The commission is hereby authorized to make and enforce such rules and regulations, and to establish, levy and collect (or to authorize by contract, franchise, lease or otherwise, the establishment, levying, and collection of) such tolls, rents, rates, and other charges in connection with the aforesaid existing bridge across the Delaware River, and any other properties which it may hereafter construct, erect, acquire, own, operate or control, as it may deem necessary, proper, desirable and reasonable, which said tolls, rents, rates, and other charges shall be at least sufficient to meet the expenses thereof, including interest and sinking-fund charges; and the commission is hereby authorized and empowered to pledge such tolls, rates, rents, and other revenues, or any part thereof, either presently received or to be received in the future, or both, as security of the repayment, with interest, of any moneys borrowed by it or advanced to it for any of its authorized purposes and as security for the satisfaction of any other obligation assumed by it in connection with such loans or advances.

"ARTICLE IX

"The Commonwealth of Pennsylvania and the State of New Jersey hereby covenant and agree with each other and with the holders of any bonds or other securities or obligations of the commission for which there may or shall be pledged the tolls, rents, rates, or other revenues, or any part thereof, of any property of facility owned, operated, or controlled by the commission (including the said bridge across the Delaware River and the facilities for the transportation of passengers

across the said bridge), that (so long as any of said bonds or other securities or obligations remain outstanding and unpaid, and unless and until adequate provision is made by law for the protection of those advancing money upon such obligations) the Commonwealth and the said State will not diminish or impair the power of the commission to own, operate, or control said properties and facilities, or to establish, levy and collect tolls, rents, rates, and other charges in connection with such properties or facilities.

"The Commonwealth of Pennsylvania and the State of New Jersey hereby covenant and agree with each other and with the holders of any bonds or other securities or obligations of the commission for which the tolls, rents, rates, or other revenues, or any part thereof, of the aforesaid existing bridge across the Delaware River shall have been pledged that the said Commonwealth and the said State will not authorize or permit the authorization of the construction, operation, or maintenance of any additional vehicular bridge or tunnel or any additional bridge or tunnel having railroad or other facilities for the transportation of passengers between the said Commonwealth and the said State over or under the Delaware River by any other person or body than the commission, within a distance of ten miles in either direction from the said bridge measured along the boundary line between the said Commonwealth and the said State.

"ARTICLE X

"The bonds or other securities or obligations which may be issued by the commission for any of its authorized purposes, and as security for which there may be pledged the tolls, rents, rates, and other revenues, or any part thereof, of any properties or facilities owned, operated, or controlled by the commission (including the aforesaid existing bridge across the Delaware River and the aforesaid facilities for the transportation of passengers across the said bridge), are hereby made securities in which all State and municipal officers and bodies of the Commonwealth of Pennsylvania and State of New Jersey, all banks, bankers, trust companies, savings banks, savings and loan associations, investment companies,

and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees, and other fiduciaries, and all other persons whatsoever, who are now or hereafter may be authorized to invest in bonds or other obligations of the Commonwealth of Pennsylvania or of the State of New Jersey, may properly and legally invest any funds, including capital belonging to them or within their control; and said bonds or other securities or obligations are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or agency of the Commonwealth of Pennsylvania or the State of New Jersey for any purpose for which the deposit of bonds or other obligations, either of the Commonwealth or of the State, is now or may hereafter be authorized.

"ARTICLE XI

"The effectuation of its authorized purposes by the commission is and will be in all respects for the benefit of the people of the Commonwealth of Pennsylvania and the State of New Jersey, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and since the commission will be performing essential governmental functions in effectuating said purposes, the commission shall not be required to pay any taxes or assessments upon any property, acquired or used by it for such purposes, and the bonds or other securities or obligations issued by the commission, their transfer, and the income thereof (including any profits made on the sale thereof) shall, at all times, be free from taxation within the Commonwealth of Pennsylvania and the State of New Jersey.

"ARTICLE XII

"The commission shall make annual reports to the Governors and Legislatures of the Commonwealth of Pennsylvania and the State of New Jersey, setting forth in detail its operations and transactions, and may make such additional reports, from time to time, to the governors and legislatures as it may deem desirable.

"Whenever the commission, after investigation and study, shall have concluded plans, with estimates of cost, and means of financing any new project, other than those described in article 1, subdivision (b) hereof, for transportation across or under the Delaware River within the area hereinbefore described, any new project for the improvement of the Delaware River's port facilities, or any other project for the mutual advantage of Pennsylvania and New Jersey and coming within the purposes for which it is created, the commission shall make to the legislatures of each State a detailed report, dealing only with the contemplated project, and shall request of said legislatures authority to proceed with the project described; and it shall not be within the power of the commission to construct, erect, or otherwise acquire any facility or project, except those described in article 1, subdivision (b) hereof, unless and until the legislatures of both States shall have authorized the commission to proceed with the project outlined in its special report thereon.

"In witness whereof, this 1st day of July, anno Domini, 1931, Gifford Pinchot has affixed his signature hereto as Governor of the Commonwealth of Pennsylvania and caused the great seal of the Commonwealth to be attached hereto.

"(SEAL) GIFFORD PINCHOT,

"Governor Commonwealth of Pennsylvania.

"And on this 1st day of July, anno Domini, 1931, the New Jersey Interstate Bridge Commission by its members, pursuant to law, has signed this agreement for and on behalf of the State of New Jersey.

"JOHN B. KATES.
"ARTHUR C. KING.
"THOMAS J. S. BARLOW.
"BARTON F. SHARP.
"ALFRED COOPER.
"FRANK L. SUPLEE.
"LUCIUS E. HIRES.
"I. NORWOOD GRISCOM.

"Witnesses:
"DAVID J. SMYTH.
"JOSEPH K. COSTELLO.
"T. HARRY ROWLAND.

Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby given to the aforesaid compact or agreement, and to each and every term and provision thereof: *Provided,* That nothing herein contained shall be construed to affect, impair, or diminish any right, power, or jurisdiction of the United States or of any court, department, board, bureau, officer, or official of the United States, over or in regard to any navigable waters, or any commerce between the States or with foreign countries, or any bridge, railroad highway, pier, wharf, or other facility or improvement, or any other person, matter, or thing, forming the subject matter of the aforesaid compact or agreement or otherwise affected by the terms thereof: *And provided further,* That the right to alter, amend, or repeal this resolution or any part thereof is hereby expressly reserved.

Approved, June 14, 1932.

PUBLIC LAW 573
CHAPTER 922 – July 17, 1952
66 STAT. 747

AN ACT

Granting the consent of Congress to a supplemental compact or agreement between the State of New Jersey and the Commonwealth of Pennsylvania concerning the Delaware River Port Authority, formerly the Delaware River Joint Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby given to the supplemental compact or agreement set forth below, and to each and every term and provision thereof: *Provided,* That nothing therein contained shall be construed to affect, impair, or diminish any right, power, or jurisdiction of the United States or of any court, department, board, bureau, officer, or official of the United States, over or in regard to any navigable waters, or any commerce between the States or with foreign countries, or any bridge, railroad, highway, pier, wharf, or other facility or improvement, or any other person, matter, or thing, forming the subject matter of said supplemental compact or agreement or otherwise affected by the terms thereof: *Provided further,* That the consent of Congress hereby given shall not be construed to affect in any manner whatsoever the application of the internal-revenue laws of the United States to the bonds or other securities or obligations issued by the commission, their transfer and the income therefrom (including any profits made on the sale thereof):

SUPPLEMENTAL AGREEMENT BETWEEN THE COMMONWEALTH OF PENNSYLVANIA AND THE STATE OF NEW JERSEY

AMENDING AND SUPPLEMENTING THE AGREEMENT ENTITLED "AGREEMENT BETWEEN THE COMMONWEALTH OF PENNSYLVANIA AND THE STATE OF NEW JERSEY CREATING THE DELAWARE RIVER JOINT COMMISSION AS A

BODY CORPORATE AND POLITIC AND DEFINING ITS POWERS AND DUTIES," CHANGING THE NAME OF THE DELAWARE RIVER JOINT COMMISSION TO THE DELAWARE RIVER PORT AUTHORITY, CHANGING THE METHOD OF APPOINTMENT OF THE COMMISSIONERS, EXTENDING THE JURISDICTION, POWERS AND DUTIES OF SAID THE DELAWARE RIVER PORT AUTHORITY, AND DEFINING SUCH ADDITIONAL JURISDICTION, POWERS AND DUTIES

The Commonwealth of Pennsylvania and the State of New Jersey do hereby solemnly covenant and agree each with the other, as follows:

(1) Article I of the "Agreement between the Commonwealth of Pennsylvania and the State of New Jersey creating the Delaware River Joint Commission as a body corporate and politic and defining its powers and duties," which was executed on behalf of the Commonwealth of Pennsylvania by its Governor on the first day of July, one thousand nine hundred and thirty-one, and on behalf of the State of New Jersey by the New Jersey Interstate Bridge Commission by its members on the first day of July, one thousand nine hundred and thirty-one, and which was consented to by the Congress of the United States by Public Resolution Number Twenty-six, being chapter two hundred fifty-eight of the Public Laws, Seventy-second Congress, approved the fourteenth day of June, one thousand nine hundred and thirty-two, is amended to read as follows:

ARTICLE I

The body corporate and politic, heretofore created and known as the Delaware River Joint Commission hereby is continued under the name of the Delaware River Port Authority (hereinafter in this agreement called the "commission"), which shall constitute the public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey for the following public purposes, and which shall be deemed to be exercising an essential governmental function in effectuating such purposes, to wit:

(a) The operation and maintenance of the bridge, owned jointly by the two States across the Delaware river between

the city of Philadelphia in the Commonwealth of Pennsylvania and the city of Camden in the State of New Jersey, including its approaches, and the making of additions and improvements thereto.

(b) The effectuation, establishment, construction, operation and maintenance of railroad or other facilities for the transportation of passengers across any bridge or tunnel owned or controlled by the commission, including extensions of such railroad or other facilities within the city of Camden and the city of Philadelphia necessary for efficient operation in the Port District.

(c) The improvement and development of the Port District for port purposes by or through the acquisition, construction, maintenance or operation of any and all projects for the improvement and development of the Port District for port purposes, or directly related thereto, either directly by purchase, lease or contract, or by lease or agreement with any other public or private body or corporation or in any other manner.

(d) Co-operation with all other bodies interested or concerned with, or affected by the promotion, development or use of the Delaware river and the Port District.

(e) The procurement from the government of the United States of any consents which may be requisite to enable any project within its powers to be carried forward.

(f) The construction, acquisition, operation and maintenance of other bridges and tunnels across or under the Delaware river, between the city of Philadelphia and the State of New Jersey, including approaches and the making of additions and improvements thereto.

(g) The promotion as a highway of commerce of the Delaware river, and the promotion of increased passenger and freight commerce on the Delaware river and for such purpose the publication of literature and the adoption of any other means as may be deemed appropriate.

(h) To study and make recommendations to the proper authorities for the improvement of terminal, lighterage, wharfage, warehouse and other facilities necessary for the promotion of commerce on the Delaware river.

(i) Institution through its counsel, or such other counsel as it shall designate, or intervention in, any litigation involving rates, preferences, rebates or other matters vital to the interest of the Port District; provided, that notice of any such institution of or intervention in litigation shall be given promptly to the Attorney General of the Commonwealth of Pennsylvania and to the Attorney General of the State of New Jersey, and provision for such notices shall be made in a resolution authorizing any such intervention or litigation and shall be incorporated in the minutes of the commission.

(j) The establishment, maintenance, rehabilitation, construction and operation of a rapid transit system for the transportation of passengers, express, mail, and baggage between points in New Jersey communities within the Port District and within a thirty-five (35) mile radius of the city of Camden, New Jersey, and points within the city of Philadelphia, Pennsylvania, and intermediate points. Such system may be established by either utilizing existing rapid transit systems, railroad facilities, highways and bridges within the territory involved or by the construction or provision of new facilities where deemed necessary.

(k) The performance of such other functions which may be of mutual benefit to the Commonwealth of Pennsylvania and the State of New Jersey insofar as concerns the promotion and development of the Port District for port purposes and the use of its facilities by commercial vessels.

(2) Article II of said agreement is amended to read as follows:

ARTICLE II

The commission shall consist of sixteen commissioners, eight resident voters of the Commonwealth of Pennsylvania and eight resident voters of the State of New Jersey, who shall serve without compensation.

The present members of the commission, including ex-officio members, shall continue to serve, respectively, as commissioners until the expiration of their terms or the terms of office by virtue of the holding of which they are members of the commission and until succeeding commissioners shall be

appointed and qualify, except that the terms of the present members of the commission for the Commonwealth of Pennsylvania shall expire as of the date of the coming into force of the supplemental compact or agreement authorized by the Act of the 1951 General Assembly of said Commonwealth providing for amendment of this article.

The commissioners for the State of New Jersey shall be appointed by the Governor of New Jersey with the advice and consent of the Senate of New Jersey, for terms of five years, and in case of a vacancy occurring in the office of commissioner during a recess of the Legislature, it may be filled by the Governor by an ad interim appointment which shall expire at the end of the next regular session of the Senate unless a successor shall be sooner appointed and qualify and, after the end of the session, no ad interim appointment to the same vacancy shall be made unless the Governor shall have submitted to the Senate a nomination to the office during the session and the Senate shall have adjourned without confirming or rejecting it, and no person nominated for any such vacancy shall be eligible for an ad interim appointment to such office if the nomination shall have failed of confirmation by the Senate.

Six of the eight commissioners for the Commonwealth of Pennsylvania shall be appointed by the Governor of Pennsylvania for terms of five years. The Auditor General and the State Treasurer of said Commonwealth shall ex-officio be commissioners for said Commonwealth, each having the privilege of appointing a representative to serve in his place at any meeting of the commission which he does not attend personally.

All commissioners shall continue to hold office after the expiration of the terms for which they are appointed or elected until their respective successors are appointed and qualify, but no period during which any commissioner shall hold over shall be deemed to be an extension of his term of office for the purpose of computing the date on which his successor's term expires.

(3) Article IV of said agreement is amended to read as follows:

ARTICLE IV

For the effectuation of its authorized purposes the commission is hereby granted the following powers:

(a) To have perpetual succession.

(b) To sue and be sued.

(c) To adopt and use an official seal.

(d) To elect a chairman, vice-chairman, secretary and treasurer, and to adopt suitable bylaws for the management of its affairs. The secretary and treasurer need not be members of the commission.

(e) To appoint, hire, or employ counsel and such other officers and such agents and employees as it may require for the performance of its duties, by contract or otherwise, and fix and determine their qualifications, duties, and compensation.

(f) To enter into contracts.

(g) To acquire, own, hire, use, operate and dispose of personal property.

(h) To acquire, own, use, lease, operate, mortgage and dispose of real property and interests in real property, and to make improvements thereon.

(i) To grant by franchise, lease or otherwise, the use of any property or facility owned or controlled by the commission and to make charges therefor.

(j) To borrow money upon its bonds or other obligations, either with or without security, and to make, enter into and perform any and all such covenants and agreements with the holders of such bonds or other obligations as the commission may determine to be necessary or desirable for the security and payment thereof, including without limitation of the foregoing, covenants and agreements as to the management and operation of any property or facility owned or controlled by it, the tolls, rents, rates or other charges to be established, levied, made and collected for any use of any such property or facility, or the application, use and disposition of the proceeds of any bonds or other obligations of the commission or the proceeds of any such tolls, rents, rates or other charges or any other revenues or moneys of the commission.

(k) To exercise the right of eminent domain within the Port District.

(l) To determine the exact location, system and character of and all other matters in connection with any and all improvements or facilities which it may be authorized to own, construct, establish, effectuate, operate or control.

(m) In addition to the foregoing, to exercise the powers, duties, authority and jurisdiction heretofore conferred and imposed upon the aforesaid the Delaware River Joint Commission by the Commonwealth of Pennsylvania or the State of New Jersey, or both of the said two States;

(n) To exercise all other powers not inconsistent with the constitutions of the two States or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, except the power to levy taxes or assessments, and generally to exercise in connection with its property and affairs, and in connection with property within its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.

(o) To acquire, purchase, construct, lease, operate, maintain and undertake any project, including any terminal facility, transportation facility, or any other facility of commerce and to make charges for the use thereof.

(p) To make expenditures anywhere in the United States and foreign countries, to pay commissions, and hire or contract with experts and consultants, and otherwise to do indirectly anything which the commission may do directly.

The commission shall also have such additional powers as may hereafter be delegated to or imposed upon it from time to time by the action of either State concurred in by legislation of the other.

It is the policy and intent of the Legislatures of the Commonwealth of Pennsylvania and the state of New Jersey that the powers granted by this article shall be so exercised that the American system of free competitive private enterprise is given full consideration and is maintained and furthered. In making its reports and recommendations to the Legislatures of the Commonwealth of Pennsylvania and the State of New Jersey on the need for any facility or project which the commis-

sion believes should be undertaken for the promotion and development of the Port District, the commission shall include therein its findings which fully set forth that the facility or facilities operated by private enterprise within the Port District and which it is intended shall be supplanted or added to are not adequate.

(4) Article XI of said agreement is amended to read as follows:

ARTICLE XI

The effectuation of its authorized purposes by the commission is and will be in all respects for the benefit of the people of the Commonwealth of Pennsylvania and the State of New Jersey, for the increase of their commerce and prosperity and for the improvement of their health and living conditions; and since the commission will be performing essential governmental functions in effectuating said purposes, the commission shall not be required to pay any taxes or assessments upon any property acquired or used by it for such purposes, and the bonds or other securities or obligations issued by the commission, their transfer and the income therefrom (including any profits made on the sale thereof) shall at all times be free from taxation within the Commonwealth of Pennsylvania and the State of New Jersey.

To the end that municipalities may not suffer undue loss of tax revenue by reason of the acquisition and ownership of property therein by the commission, the commission is hereby authorized and empowered, in its discretion, to enter into a voluntary agreement or agreements with any municipality, whereby it will undertake to pay a fair and reasonable sum or sums to compensate the said municipality for any loss of tax revenue in connection with any property acquired by the commission after one thousand nine hundred and fifty other than property acquired for bridge, tunnel or passenger transportation purposes. Any such payment or payments which the commission is hereby authorized and empowered to make may be made on an annual basis, in which case the payment or payments shall not be in excess of the amount of the taxes upon the property when last assessed prior to the time of its acqui-

sition by the commission, or such payment or payments may be made in a lump sum or sums, or over a stated period of years, as shall be agreed upon by and between the commission and such municipality. Every municipality wherein the property shall be acquired by the commission is authorized and empowered to enter into such agreement or agreements with the commission to accept the payment or payments which the commission is herein authorized and empowered to make.

(5) Article XII of said agreement is amended to read as follows:

ARTICLE XII

The commission shall make annual reports to the Governors and Legislatures of the Commonwealth of Pennsylvania and the State of New Jersey, setting forth in detail its operations and transactions, and may make such additional reports from time to time to the Governors and Legislatures as it may deem desirable. Copies thereof shall be available for public information and use.

Whenever the commission after investigation and study shall have concluded plans, with estimates of cost and means of financing, for any new project for a purpose other than any described in Article I, subdivisions (b) or (j) hereof, for transportation across or under the Delaware river within the Port District or improvement of the Delaware river's port facilities, the commission shall make to the Legislatures of each State a detailed report dealing only with the contemplated project and shall request of said Legislatures authority to proceed with the project described and it shall not be within the power of the commission to construct, erect or otherwise acquire any new facility or project, for a purpose other than any described in Article I, subdivisions (b) or (j) hereof, unless and until the Legislatures of both States shall have authorized the commission to proceed with the project outlined in its special report thereon.

In addition, to other powers conferred upon it, and not in limitation thereof, the commission may acquire all right, title and interest in and to the Tacony-Palmyra bridge, across the

Delaware river at Palmyra, New Jersey, together with any approaches and interests in real property necessary thereto. The acquisition of such bridge, approaches and interests by the commission shall be by purchase or by condemnation in accordance with the provisions of the Federal law consenting to or authorizing the construction of such bridge and approaches, or the acquisition of such bridge, approaches or interests by the commission shall be pursuant to and in accordance with the provisions of section 48:5-22 and 48:5-23 of the Revised Statutes of New Jersey, and for all the purposes of said provisions and sections the commission is hereby appointed as the agency of the State of New Jersey and the Commonwealth of Pennsylvania exercising the rights and powers granted or reserved by said Federal law or sections to the State of New Jersey and Commonwealth of Pennsylvania jointly or to the State of New Jersey acting in conjunction with the Commonwealth of Pennsylvania. The commission shall have authority to so acquire such bridge, approaches and interests, whether the same be owned, held, operated or maintained by any private person, firm, partnership, company, association or corporation or by any instrumentality, public body, commission, public agency or political subdivision (including any county or municipality) of, or created by or in, the State of New Jersey or the Commonwealth of Pennsylvania, or by any instrumentality, public body, commission or public agency of, or created by or in, a political subdivision (including any county or municipality) of the State of New Jersey or the Commonwealth of Pennsylvania. None of the provisions of the preceding paragraph shall be applicable with respect to the acquisition by the commission, pursuant to this paragraph, of said Tacony-Palmyra bridge, approaches and interests. The power and authority herein granted to the commission to acquire said Tacony-Palmyra bridge, approaches and interests shall not be exercised unless and until the Governor of the State of New Jersey and the Governor of the Commonwealth of Pennsylvania have filed with the commission their written consents to such acquisition.

It shall not be within the power of the commission to construct, erect, or otherwise acquire any new facility or

project for a purpose described in Article I, subdivision (j) hereof, unless and until the commission shall have made to the Legislature and Governor of the State of New Jersey and to the Legislature and Governor of the Commonwealth of Pennsylvania a detailed report dealing only with such contemplated facility or project, and the Governor of said State and the Governor of said Commonwealth shall have filed with the commission their written consents to such construction, erection or acquisition.

Notwithstanding any provision of this agreement, nothing herein contained shall be construed to limit or impair any right or power granted or to be granted to the Pennsylvania Turnpike Commission or the New Jersey Turnpike Authority, to finance, construct, operate and maintain the Pennsylvania Turnpike System or any turnpike project of the New Jersey Turnpike Authority, respectively, throughout the Port District, including the right and power, acting alone or in conjunction with each other, to provide for the financing, construction, operation and maintenance of one bridge across the Delaware river south of the city of Trenton in the State of New Jersey; provided that such bridge shall not be constructed within a distance of ten miles, measured along the boundary line between the Commonwealth of Pennsylvania and the State of New Jersey, from the existing bridge, operated and maintained by the commission, across the Delaware river between the city of Philadelphia in the Commonwealth of Pennsylvania and the city of Camden in the State of New Jersey, so long as there are any outstanding bonds or other securities or obligations of the commission for which the tolls, rents, or other revenues, or any part thereof, of said existing bridge shall have been pledged. Nothing contained in this agreement shall be construed to authorize the commission to condemn any such bridge.

Anything herein contained to the contrary notwithstanding, no bridge or tunnel shall be constructed, acquired, operated or maintained by the commission across or under the Delaware river north of the boundary line between Bucks county and Philadelphia county in the Commonwealth of

Pennsylvania as extended across the Delaware river to the New Jersey shore of said river, and any new bridge or tunnel authorized by or pursuant to this compact or agreement to be constructed or erected by the commission may be constructed or erected at any location south of said boundary line notwithstanding the terms and provisions of any other agreement between the Commonwealth of Pennsylvania and the State of New Jersey. Except as may hereinafter be otherwise provided in conformity with Article IX hereof with respect to specific properties designated by action of the Legislatures of both of the signatory States, no property or facility owned or controlled by the commission shall be acquired from it by any exercise of powers of condemnation or eminent domain.

(6) Said agreement is further amended by adding thereto, following the last article thereof, a new article reading as follows:

ARTICLE XIII

As used herein, unless a different meaning clearly appears from the context:

"Port District" shall mean all the territory within the counties of Delaware and Philadelphia in Pennsylvania, and all the territory within the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem in New Jersey.

"Commission" shall mean the Delaware River Port Authority and, when required by the context, the board constituting the governing body thereof in charge of its property and affairs.

"Commissioner" shall mean a number of the governing body of the Delaware River Port Authority.

"Terminal" shall include any marine, motor truck, railroad and air terminal, also any coal, grain and lumber terminal and any union freight and other terminals used or to be used in connection with the transportation of passengers and freight, and equipment, materials and supplies therefor.

"Transportation facility" and "facilities for transportation of passengers" shall include railroads operated by steam, electricity or other power, rapid transit lines, motor trucks, tunnels, bridges, airports, boats, ferries, carfloats, lighters, tugs,

floating elevators, barges, scows, or harbor craft of any kind, and aircraft, and equipment, materials and supplies therefor.

"Terminal facility" shall include wharves, piers, slips, ferries, docks, drydocks, ship repair yards, bulkheads, dock walls, basins, carfloats, float-bridges, dredging equipment, radio receiving and sending stations, grain or other storage elevators, warehouses, cold storage, tracks, yards, sheds, switches, connections, overhead appliances, bunker coal, oil and fresh water stations, markets, and every kind of terminal, storage or supply facility now in use, or hereafter designed for use to facilitate passenger transportation and for the handling, storage, loading or unloading of freight at terminals, and equipment, materials and supplies therefor.

"Transportation of passengers" and "passenger transportation" shall mean the transportation of passengers by railroad or other facilities.

"Rapid transit system" shall mean a transit system for the transportation of passengers, express, mail and baggage by railroad or other facilities, and equipment, materials and supplies therefor.

"Project" shall mean any improvement, betterment, facility or structure authorized by or pursuant to this compact or agreement to be constructed, erected, acquired, owned or controlled or otherwise undertaken by the commission. "Project" shall not include undertakings or purposes described in Article I, subdivisions (a), (d), (e), (g), (h) and (i).

"Railroad" shall include railways, extensions thereof, tunnels, subways, bridges, elevated structures, tracks, poles, wires, conduits, powerhouses, substations, lines for the transmission of power, carbarns, shops, yards, sidings, turnouts, switches, stations and approaches, thereto, cars and motive equipment.

"Bridge" and "tunnel" shall include such approach highways and interests in real property necessary therefor in the Commonwealth of Pennsylvania or the State of New Jersey as may be determined by the commission to be necessary to facilitate the flow of traffic in the vicinity of a bridge or tunnel or to connect a bridge or tunnel with the highway system or other traffic facilities in said Commonwealth or said State; *provided, however,* that the power and authority herein

granted to the commission to construct new or additional approach highways shall not be exercised unless and until the Department of Highways of the Commonwealth of Pennsylvania shall have filed with the commission its written approval as to approach highways to be located in said Commonwealth and the State Highway Department of the State of New Jersey shall have filed with the commission its written approval as to approach highways to be located in said State.

"Facility" shall include all works, buildings, structures, property, appliances, and equipment, together with appurtenances necessary and convenient for the proper construction, equipment, maintenance and operation of a facility or facilities or any one or more of them.

"Personal property" shall include choses in action and all other property now commonly, or legally, defined as personal property, or which may hereafter be so defined.

"Lease" shall include rent or hire.

"Municipality" shall include a county, city, borough, village, township, town, public agency, public authority or political subdivision.

Words importing the singular number include the plural number and vice versa.

Wherever legislation or action by the Legislature of either signatory State is herein referred to it shall mean an act of the Legislature duly adopted in accordance with the provisions of the Constitution of such State.

IN WITNESS WHEREOF, this 23rd day of August 1951, ALFRED E. DRISCOLL has affixed his signature hereto as Governor of the State of New Jersey and caused the great seal of the State to be attached.

ALFRED E. DRISCOLL
Governor,
State of New Jersey
(Great Seal)

Attest:
LLOYD B. MARSH
Lloyd B. Marsh
Secretary of State

IN WITNESS WHEREOF, this 30th day of August, 1951, JOHN S. FINE has affixed his signature hereto as Governor of the Commonwealth of Pennsylvania and caused the great seal of the Commonwealth to be attached thereto.

JOHN S. FINE
Governor,
Commonwealth of
Pennsylvania
(Great Seal)

Attest:
GENE D. SMITH
Gene D. Smith
Secretary of the
Commonwealth

SEC. 2. Subject to the provisions of the compact or agreement between the Commonwealth of Pennsylvania and the State of New Jersey creating the Delaware River Joint Commission, as amended and supplemented, the Delaware River Port Authority (herein called the "commission"), formerly the Deleware River Joint Commission, is hereby authorized to construct, acquire, finance, operate, maintain and own bridges and tunnels across or under the Delaware River, including any bridge heretofore constructed under the authority or with the consent of the Congress, with such approaches thereto and highway connections as may be necessary or desirable, in accordance with the applicable provisions of section 502(b) of the General Bridge Act of 1946 and section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C., sec. 403), and is further authorized to effectuate, establish, maintain, rehabilitate, construct and operate railroad or other facilities for the transportation of passengers across any such bridge or tunnel owned or controlled by the commission and a rapid transit system for passengers, express, mail, and baggage between points within the city of Philadelphia, Pennsylvania, and points within the State of New Jersey, and intermediate points.

SEC. 3. Notwithstanding any limitation on the collection of tolls as prescribed by section 506 of the General Bridge Act

of 1946, as amended, or as prescribed by any Act heretofore enacted by the Congress authorizing or consenting to the construction or acquisition of any bridge constructed or acquired by the commission, the commission is hereby authorized to fix, charge and collect tolls or other charges for the use of any bridge or tunnel heretofore or hereafter established, controlled, constructed, or acquired by the commission, and to combine any two or more of such bridges or tunnels, or combine any one or more of such bridges or tunnels, with any railroad, rapid-transit system, or other properties or facilities for transportation, terminal or port improvement purposes (each such bridge, tunnel, railroad, system, or other property or facility being hereinafter referred to as "facility") heretofore or hereafter established, controlled, constructed or acquired by the commission, and combine the tolls or revenues therefrom, and to fix, charge, and collect tolls or other charges for the use of such facilities so combined, and to use or pledge any such tolls or other charges for purposes of financing, acquiring, constructing, operating or maintaining any facility or facilities, all to the extent provided by and in accordance with the provisions of the aforesaid compact or agreement as amended and supplemented, as consented to by the Congress, and the laws of the State of New Jersey and Commonwealth of Pennsylvania with respect thereto or to said commission: *Provided,* That, as a specific exemption from the provisions of section 506 of the General Bridge Act of 1946, as amended, the collection of tolls for the use of any bridge hereafter constructed or acquired by the commission, in excess of amounts reasonably required for the operation and maintenance thereof under economical management, shall cease at the expiration of fifty years from the date of the opening to traffic by the commission of the bridge latest constructed or acquired by said commission after the effective date of this Act, and the rate of such tolls shall be subject to the provisions of section 503 of the General Bridge Act of 1946, as amended.

SEC. 4. The right to alter, amend, or repeal this Act is hereby expressly reserved.

Approved July 17, 1952.

PUBLIC LAW 88-320 – June 13, 1964
78 STAT. 215

AN ACT

Granting the consent of Congress to a further supplemental compact or agreement between the State of New Jersey and the Commonwealth of Pennsylvania concerning the Delaware River Port Authority, formerly the Delaware River Joint Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby given to the supplemental compact or agreement set forth below, and to each and every term and provision thereof: *Provided,* That nothing therein contained shall be construed to affect, impair, or diminish any right, power, or jurisdiction of the United States or of any court, department, board, bureau, officer, or official of the United States, over and in regard to any navigable waters, or any commerce between the States or with foreign countries, or any bridge, railroad, highway, pier, wharf, or other facility or improvement, or any other person, matter, or thing, forming the subject matter of said supplemental compact or agreement or otherwise affected by the terms thereof: *Provided further,* That nothing in this Act shall be construed as granting the consent of Congress in advance to the performance or effectuation of any purposes set forth in article I, paragraph (1) not now otherwise permitted or provided for under the Agreement between the Commonwealth of Pennsylvania and the State of New Jersey creating the Delaware River Joint Commission as a body corporate and politic and defining its power and duties, which was executed on behalf of the Commonwealth of Pennsylvania by its Governor on July first, one thousand nine hundred and thirty-one, and on behalf of the State of New Jersey by the New Jersey Interstate Bridge Commission by its members on July first, one thousand nine hundred and thirty-one, and which was consented to by the Congress by Public Resolution Number twenty-six, being chapter two hundred fifty-eight of the Public Laws, Seventy-second Con-

gress, approved June fourteenth, one thousand nine hundred and thirty-two, as heretofore amended and supplemented and as amended and supplemented by the supplemental compact or agreement hereby consented to:

SUPPLEMENTAL AGREEMENT BETWEEN THE COMMONWEALTH OF PENNSYLVANIA AND THE STATE OF NEW JERSEY FURTHER AMENDING AND SUPPLEMENTING THE AGREEMENT ENTITLED "AGREEMENT BETWEEN THE COMMONWEALTH OF PENNSYLVANIA AND THE STATE OF NEW JERSEY CREATING THE DELAWARE RIVER JOINT COMMISSION AS A BODY CORPORATE AND POLITIC AND DEFINING ITS POWERS AND DUTIES" ENLARGING THE PUBLIC PURPOSES OF THE DELAWARE RIVER PORT AUTHORITY AND EXTENDING ITS JURISDICTION, POWERS AND DUTIES AND DEFINING SUCH ADDITIONAL PURPOSES, JURISDICTION, POWERS AND DUTIES.

The Commonwealth of Pennsylvania and the State of New Jersey do hereby solemnly covenant and agree, each with the other, as follows:

(1) Article I of the compact or agreement entitled "Agreement between the Commonwealth of Pennsylvania and the State of New Jersey creating The Delaware River Joint Commission as a body corporate and politic and defining its powers and duties", which was executed on behalf of the Commonwealth of Pennsylvania by its Governor on July first, one thousand nine hundred and thirty-one, and on behalf of the State of New Jersey by the New Jersey Interstate Bridge Commission by its members on July first, one thousand nine hundred and thirty-one, and which was consented to by the Congress of the United States by Public Resolution Number twenty-six, being chapter two hundred fifty-eight of the Public Laws, Seventy-second Congress, approved June fourteenth, one thousand nine hundred and thirty-two, as heretofore amended and supplemented, is amended to read as follows:

ARTICLE I

The body corporate and politic, heretofore created and known as The Delaware River Joint Commission, hereby is

continued under the name of The Delaware River Port Authority (hereinafter in this agreement called the "commission"), which shall constitute the public corporate instrumentality of the Commonwealth of Pennsylvania and the States of New Jersey for the following public purposes and which shall be deemed to be exercising an essential governmental function in effectuating such purposes, to wit:

(a) The operation and maintenance of the bridge, owned jointly by the two States, across the Delaware River between the City of Philadelphia in the Commonwealth of Pennsylvania and the City of Camden in the State of New Jersey, including its approaches, and the making of additions and improvements thereto.

(b) The effectuation, establishment, construction, operation and maintenance of railroad or other facilities for the transportation of passengers across any bridge or tunnel owned or controlled by the commission, including extensions of such railroad or other facilities within the City of Camden and the City of Philadelphia necessary for efficient operation in the Port District.

(c) The improvement and development of the Port District for port purposes by or through the acquisition, construction, maintenance or operation of any and all projects for the improvement and development of the Port District for port purposes, or directly related thereto, either directly by purchase, lease or contract, or by lease or agreement with any other public or private body or corporation, or in any other manner.

(d) Cooperation with all other bodies interested or concerned with, or affected by the promotion, development or use of the Delaware River and the Port District.

(e) The procurement from the Government of the United States of any consents which may be requisite to enable any project within its powers to be carried forward.

(f) The construction, acquisition, operation and maintenance of other bridges and tunnels across or under the Delaware River, between the City of Philadelphia or the County of Delaware in the Commonwealth of Pennsylvania, and the

State of New Jersey, including approaches, and the making of additions and improvements thereto.

(g) The promotion as a highway of commerce of the Delaware River, and the promotion of increased passenger and freight commerce on the Delaware River and for such purpose the publication of literature and the adoption of any other means as may be deemed appropriate.

(h) To study and make recommendations to the proper authorities for the improvement of terminal, lighterage, wharfage, warehouse and other facilities necessary for the promotion of commerce on the Delaware River.

(i) Institution through its counsel, or such other counsel as it shall designate, or intervention in, any litigation involving rates, preferences, rebates or other matters vital to the interest of the Port District: *Provided,* That notice of any such institution of or intervention in litigation shall be given promptly to the Attorney General of the Commonwealth of Pennsylvania and to the Attorney General of the State of New Jersey, and provision for such notices shall be made in a resolution authorizing any such intervention or litigation and shall be incorporated in the minutes of the commission.

(j) The establishment, maintenance, rehabilitation, construction and operation of a rapid transit system for the transportation of passengers, express, mail, and baggage, or any of them, between points in New Jersey within the Port District and within a thirty-five (35) mile radius of the City of Camden, New Jersey, and points within the City of Philadelphia, Pennsylvania, and intermediate points. Such system may be established by utilizing existing rapid transit systems, railroad facilities, highways and bridges within the territory involved and by the construction or provision of new facilities where deemed necessary, and may be established either directly by purchase, lease or contract, or by lease or agreement with any other public or private body or corporation, or in any other manner.

(k) The performance of such other functions which may be of mutual benefit to the Commonwealth of Pennsylvania and the State of New Jersey insofar as concerns the promotion and development of the Port District for port purposes and the use of its facilities by commercial vessels.

(l) The performance or effectuation of such additional bridge, tunnel, railroad, rapid transit, transportation, transportation facility, terminal, terminal facility, and port improvement and development purposes within the Port District as may hereafter be delegated to or imposed upon it by the action of either State concurred in by legislation of the other.

(2) Said compact or agreement is further amended and supplemented by adding thereto, as a part thereof, following Article XII-A thereof, a new article reading as follows:

ARTICLE XII-B

(1) In addition to other public purposes provided for it and other powers and duties conferred upon it, and not in limitation thereof, and notwithstanding the provisions of any other article hereof, the Commission shall have among its authorized purposes, and it shall have the power to effectuate, the construction, operation and maintenance of a bridge for vehicular traffic across the Delaware River, between a point or points in the Township of Logan, New Jersey, and a point or points in the City of Chester, Pennsylvania, including approaches thereto.

(2) In addition to other public purposes provided for it and other powers and duties conferred upon it, and not in limitation thereof, and notwithstanding the provisions of any other article hereof, the Commission shall have among its authorized purposes, and it shall have the power to effectuate, the establishment, rehabilitation, equipment, construction, maintenance and operation of ferries for passengers and vehicular traffic over and across the Delaware River within the Port District between the Commonwealth of Pennsylvania and the State of New Jersey. Such ferries may be established either directly by purchase, lease or contract, or by lease or agreement with any other public or private body or corporation, or in any other manner, and may be established by utilizing any existing ferries within the Port District across the Delaware River between said Commonwealth and said State and by the construction or provision of new facilities where deemed necessary. Any such ferry may include such approach highways and interests in land or other property necessary

therefor in the Commonwealth of Pennsylvania or the State of New Jersey as may be determined by the Commission to be necessary to facilitate the flow of traffic in the vicinity of any such ferry or to connect any such ferry with the highway system or other traffic facilities in said Commonwealth or said State.

(3)(a) For the effectuation of any of its purposes authorized by this article, the Commission is hereby granted, in addition to any other powers heretofore or hereafter granted to it, power and authority to acquire in its name by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the power of eminent domain, any such land and other property which it may determine is reasonably necessary to acquire for any of its purposes authorized by this article and any and all rights, title and interest in such land and other property, including public lands, parks, playgrounds, reservations, highways, or parkways, owned by or in which any county, city, borough, town, township, village, or other political subdivision of the State of New Jersey or the Commonwealth of Pennsylvania has any right, title or interest, or parts thereof or rights therein, and any fee simple absolute or any lesser interest in private property, and any fee simple absolute in, easements upon, or the benefit of restrictions upon, abutting property to preserve and protect such land and other property. Upon the exercise of the power of eminent domain under this paragraph, the compensation to be paid with regard to property located in the State of New Jersey shall be ascertained and paid in the manner provided in Title 20 of the Revised Statutes of New Jersey insofar as the provisions thereof are applicable and not inconsistent with the provisions contained in this paragraph, and with regard to property located in the Commonwealth of Pennsylvania shall be ascertained and paid in the manner provided by the act approved the ninth day of July, one thousand nine hundred nineteen (Pamphlet Laws 814) and acts amendatory thereof and supplementary thereto, insofar as the provisions are applicable and not inconsistent with the provisions contained in this paragraph. The Commission may join in separate subdivisions in one petition or com-

plaint the descriptions of any number of tracts or parcels of such land and other property to be condemned, and the names of any number of owners and other parties who may have an interest therein, and all such land and other property included in said petition or complaint may be condemned in a single proceeding: *Provided, however.* That separate awards shall be made for each tract or parcel of such land or other property: *And provided further.* That each of said tracts or parcels of such land or other property lies wholly in or has a substantial part of its value lying wholly within the same county.

(b) Whenever the Commission acquires under this paragraph (3) the whole or any part of the right of way of a public utility located in the Commonwealth of Pennsylvania, the Commission shall, at its own expense, provide a substitute right of way on another and favorable location. Such public utility shall thereupon provide for the transfer to, or reconstruction upon, in, under or above said substitute right of way of any structures and facilities of said public utility located upon, in, under or above said original right of way at the time the same is so acquired. The Commission is hereby authorized to enter into agreements with such public utility to contribute toward the expense of such transfer or reconstruction, and in the event that they are unable to agree on the amount to be paid, the matter shall be referred to the Pennsylvania Public Utility Commission which shall, after hearing thereon, make a finding of the amount to be paid to such public utility by the Commission. In case of failure of such public utility, within a reasonable time after notice so to do, to remove its facilities to such substitute right of way, the Pennsylvania Public Utility Commission shall have jurisdiction, on petition of the Commission, to order such transfer or reconstruction. Any party to such proceedings shall have the right of appeal from the ruling of the Pennsylvania Public Utility Commission. The Delaware River Port Authority is hereby authorized to acquire, by purchase or by the exercise of the power of eminent domain, any necessary land or right of way for the relocation of any such public utility right of way and facilities. The substitute right of way thus acquired shall be equal in estate to the original right of way acquired from the public utility, and the Com-

mission shall deliver to the public utility a deed, duly executed and acknowledged, conveying to it an estate in the substitute right of way at least equal to that owned by the public utility in the original right of way, or if such substitute right of way is to be acquired by purchase, the Commission shall procure and deliver to the public utility a deed conveying such estate to it from the owner of the land on which such substitute right of way is located.

This sub-paragraph (b) shall have no application to the relocation of public utility facilities located in the beds of public streets, roads or highways.

(c) In addition to any other powers heretofore or hereafter granted to it, the Commission, in connection with construction or operation of any project for the effectuation of any of its purposes authorized by this article, shall have power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles or any other equipment and appliances (in this sub-paragraph (c) called "works") located in the State of New Jersey of any public utility as defined in section 48:2-13 of the revised statutes of New Jersey, in, on, along, over or under any such project. Whenever in connection with the construction or operation of any such project the Commission shall determine that it is necessary that any such works, which now are or hereafter may be located in, on, along, over or under any such project should be relocated in such project, or should be removed therefrom, the public utility owning or operating such works shall relocate or remove the same in accordance with the order of the Commission, provided, however, That, except in the case of the relocation or removal of such works located in, or, along, over or under public streets, roads or highways, the cost and expenses of such relocation or removal, including the cost of installing such works in a new location or new locations, and the cost of any lands or any rights or interest in lands or any other rights acquired to accomplish such relocation or removal, less the cost of any lands or any rights or interests in lands or any other rights of the public utility paid to the public utility in connection with the relocation or

removal of such works, shall be paid by the Commission and shall be included in the cost of such project. In case of any such relocation or removal of works as aforesaid, the public utility owning or operating the same, its successors or assigns, may maintain and operate such works, with the necessary appurtenances, in the new location or new locations for as long a period, and upon the same terms and conditions, as it had the right to maintain and operate such works in their former location.

In case of any such relocation or removal of works, as aforesaid, the Commission shall own and maintain, repair and renew structures within the rights of way of railroad companies carrying any such project over railroads, and the Commission shall bear the cost of maintenance, repair and renewal of structures within the rights of way of railroad companies carrying railroads over any such project, but this provision shall not relieve any railroad company from responsibility for damage caused to any authority or railroad structure by the operation of its railroad. Such approaches, curbing, sidewalk paving, guard rails on approaches and surface paving on such projects as shall be within the rights of way of a railroad company or companies shall be owned and maintained, repaired and renewed by the Commission; rails, pipes and lines shall be owned and maintained, repaired and renewed by the railroad company or companies.

(4) The power and authority granted in this article to the Commission to construct new or additional approach highways shall not be exercised unless and until the Department of Highways of the Commonwealth of Pennsylvania shall have filed with the Commission its written approval as to approach highways to be located in said Commonwealth and the State Highway Department of the State of New Jersey shall have filed with the Commission its written approval as to approach highways to be located in said State.

(5) The effectuation of any of the purposes authorized by this article, and the exercise or performance by the Commission of any of its powers or duties in connection with effectuation of any such purpose, shall not be subject to any restrictions, limitations or provisions provided for or set forth in

Article XII hereof. The bridge or ferries referred to in this article may be established, constructed or erected by the Commission notwithstanding the terms and provisions of any other agreement between the Commonwealth of Pennsylvania and the State of New Jersey.

(6) The Commission shall not construct or erect the bridge referred to in this article unless and until the Governor of the State of New Jersey and the Governor of the Commonwealth of Pennsylvania shall have filed with the Commission their written consents to such construction or erection.

(7) The Commission is hereby granted the following powers in addition to any other powers heretofore or hereafter granted to it:

(a) To abandon, close off, dismantle, sell or otherwise dispose of, any project or facility, or any part thereof, or any other property, which the Commission may determine to be no longer useful or necessary for public use.

(b) To effectuate any of its authorized purposes either directly or indirectly by or through wholly owned subsidiary corporations. Any such subsidiary corporation shall be a public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey for such purposes and shall be deemed to be exercising an essential governmental function in effectuating such purposes. Any such subsidiary corporation and any of its property, functions and activities shall have such of the privileges, immunities, tax and other exemptions of the Commission and of the Commission's property, functions and activities, and such of the rights, powers and duties of the Commission, as the Commission shall determine.

(8) The power of the Commission, which is hereby confirmed, to purchase, construct, lease, finance, operate, maintain and own a terminal facility consisting in whole or in part of a parking area or place, garage, building, improvement, structure, or other accommodation for the parking or storage of motor or other vehicles, including all real or personal property necessary or desirable in connection therewith, shall, notwithstanding any other provision of this agreement, be exercised only at such place, in the vicinity of and in connection

with, or as a part of any bridge, tunnel, ferry, railroad, rapid transit system, transportation or terminal facility, as the Commission may determine to be necessary or desirable.

IN WITNESS WHEREOF, this 25th day of June, 1963, RICHARD J. HUGHES has affixed his signature hereto as Governor of the State of New Jersey and caused the great seal of the State to be attached hereto.

S/ Richard J. Hughes
GOVERNOR,
STATE OF NEW JERSEY

Attest:

S/ Robert J. Burkhardt
SECRETARY OF STATE

IN WITNESS WHEREOF, this 26th day of June, 1963, WILLIAM W. SCRANTON has affixed his signature hereto as Governor of the Commonwealth of Pennsylvania and caused the great seal of the Commonwealth to be attached hereto.

S/ William W. Scranton
GOVERNOR,
COMMONWEALTH OF PENNSYLVANIA

Attest:

S/ George I. Bloom
SECRETARY OF THE COMMONWEALTH

SEC. 2. Public Laws 573 and 574, being respectively chapter 921 and chapter 922 of the Public Laws, Eighty-second Congress, second session, both approved July 17, 1952, are hereby confirmed and continued and shall be construed to apply to the aforesaid supplemental compact or agreement as if the supplemental compact or agreement had been consented to by such Public Laws.

SEC. 3. The right to alter, amend, or repeal this Act is hereby expressly reserved.

Approved June 13, 1964.

PUBLIC LAW 102-544 — OCT. 27, 1992
106 STAT. 3576

DELAWARE RIVER PORT AUTHORITY

An Act granting the consent of the Congress to a supplemental compact or agreement between the Commonwealth of Pennsylvania and the State of New Jersey concerning the Delaware River Port Authority.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress consents to a supplemental compact or agreement between The Commonwealth of Pennsylvania and the State of New Jersey amending articles I, II, III, IV, XII, and XIII of the compact or agreement between the Commonwealth of Pennsylvania and the State of New Jersey entitled "Agreement Between The Commonwealth of Pennsylvania and The State of New Jersey creating the Delaware River Joint Commission as a body corporate and politic and defining its powers and duties". The supplemental compact or agreement is substantially as follows:

(1) Article I of the "Agreement Between The Commonwealth of Pennsylvania and The State of New Jersey creating the Delaware River Joint Commission as a body corporate and politic and defining its powers and duties"; as amended and supplemented, is amended to read as follows:

"The body corporate and politic, heretofore created and known as the Delaware River Joint Commission hereby is continued under the name of the Delaware River Port Authority (hereinafter in this agreement called the 'commission'), which shall constitute the public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey for the following public purposes, and which shall be deemed to be exercising an essential governmental function in effectuating such purposes, to wit:

"(a) The operation and maintenance of the bridge, owned jointly by the 2 States, across the Delaware River between the city of Philadelphia in the Commonwealth of

Pennsylvania and the city of Camden in the State of New Jersey, including its approaches, and the making of additions and improvements thereto.

"(b) The effectuation, establishment, construction, acquisition, operation, and maintenance of railroad or other facilities for the transportation of passengers across any bridge or tunnel owned or controlled by the commission, including extensions of such railroad or other facilities necessary for efficient operation in the Port District.

"(c) The improvement and development of the Port District for port purposes by or through the acquisition, construction, maintenance, or operation of any and all projects for the improvement and development of the Port District for port purposes, or directly related thereto, either directly by purchase, lease, or contract, or by lease or agreement with any other public or private body or corporation or in any other manner.

"(d) Co-operation with all other bodies interested or concerned with, or affected by the promotion, development or use of the Delaware River and the Port District.

"(e) The procurement from the Government of the United States of any consents which may be requisite to enable any project within its powers to be carried forward.

"(f) The construction, acquisition, operation and maintenance of other bridges and tunnels across or under the Delaware River, between the city of Philadelphia or the county of Delaware in the Commonwealth of Pennsylvania and the State of New Jersey, including approaches and the making of additions and improvements thereto.

"(g) The promotion as a highway of commerce of the Delaware River, and the promotion of increased passenger and freight commerce on the Delaware River and for such purpose the publication of literature and the adoption of any other means as may be deemed appropriate.

"(h) To study and make recommendations to the proper authorities for the improvement of terminal, lighterage, wharfage, warehouse and other facilities necessary for the promotion of commerce on the Delaware River.

"(i) Institution through its counsel, or such other counsel as it shall designate, or intervention in, any litigation involving rates, preferences, rebates, or other matters vital to the interest of the Port District; provided, that notice of any such institution of or intervention in litigation shall be given promptly to the Attorney General of the Commonwealth of Pennsylvania and to the Attorney General of the State of New Jersey, and provision for such notices shall be made in a resolution authorizing any such intervention or litigation and shall be incorporated in the minutes of the commission.

"(j) The establishment, maintenance, rehabilitation, construction and operation of a rapid transit system for the transportation of passengers, express mail, and baggage, or any of them, between points in New Jersey within the Port District and points in Pennsylvania within the Port District, and intermediate points. Such system may be established either by utilizing existing rapid transit systems, railroad facilities, highways, and bridges within the territory involved or by the construction or provision of new rail facilities where deemed necessary, and may be established either directly by purchase, lease, or contract, or by lease or agreement with any other public or private body or corporation, or in any other manner.

"(k) The performance of such other functions which may be of mutual benefit to the Commonwealth of Pennsylvania and the State of New Jersey insofar as concerns the promotion and development of the Port District for port purposes and the use of its facilities by commercial vessels.

"(l) The performance or effectuation of such additional bridge, tunnel, railroad, rapid transit, transportation, transportation facility, terminal, terminal facility, and port improvement and development purposes within the Port District as may hereafter be delegated to or imposed upon it by the action of either State concurred in by legislation of the other.

"(m) The unification of the ports of the Delaware River through (i) the acquisition or taking control of any terminal, terminal facility, transportation facility or marine terminal or port facility or associated property within the Port District through purchase, lease, or otherwise, or by the acquisition, merger, becoming the successor to or entering into contracts,

agreements, or partnerships with any other port corporation, port authority, or port related entity which is located within the Port District, all in accordance with the applicable laws of the State in which the facility, corporation, or authority is located; (ii) the exercise of the other powers granted by this compact; or (iii) the establishment (whether solely or jointly with any other entity or entities) of such subsidiary corporation or corporations or maritime or port advisory committees as may be necessary or desirable to effectuate this purpose.

"(n) The planning, financing, development, acquisition, construction, purchase, lease, maintenance, marketing, improvement and operation of any project, including but not limited to any terminal, terminal facility, transportation facility, or any other facility of commerce or economic development activity; from funds available after appropriate allocation for maintenance of bridge and other capital facilities.".

(2) Article II of the agreement is amended to read as follows:

"The commission shall consist of sixteen commissioners eight resident voters of the Commonwealth of Pennsylvania and eight resident voters of the State of New Jersey, who shall serve without compensation.

"The commissioners for the State of New Jersey shall be appointed by the Governor of New Jersey with the advice and consent of the Senate of New Jersey, for terms of five years, and in case of a vacancy occurring in the office of commissioner during a recess of the Legislature, it may be filled by the Governor by an ad interim appointment which shall expire at the end of the next regular session of the Senate unless a successor shall be sooner appointed and qualify and, after the end of the session, no ad interim appointment to the same vacancy shall be made unless the Governor shall have submitted to the Senate a nomination to the office during the session and the Senate shall have adjourned without confirming or rejecting it, and no person nominated for any such vacancy shall be eligible for an ad interim appointment to such office if the nomination shall have failed of confirmation by the Senate.

"Six of the eight commissioners for the Commonwealth of Pennsylvania shall be appointed by the Governor of Pennsylvania for terms of five years. The Auditor General and the State Treasurer of said Commonwealth shall be ex officio commissioners for said Commonwealth, each having the privilege of appointing a representative to serve in his place at a meeting of the commission which he does not attend personally. Any commissioner who is an elected public official shall have the privilege of appointing a representative to serve and act in his place at any meeting of the commission which he does not attend personally.

"All commissioners shall continue to hold office after the expiration of the terms for which they are appointed or elected until their respective successors are appointed and qualify, but a period during which any commissioner shall hold over shall be deemed to be an extension of his term of office for the purpose of computing the date on which his successor's term expires.".

(3) Article III of the agreement is amended to read as follows:

"The commissioners shall have charge of the commission's property and affairs and shall for the purpose of doing business constitute a board, but no action of the commissioners shall be binding unless a majority of the members of the commission from Pennsylvania and a majority of the members of the commission from New Jersey shall vote in favor thereof.

"Notwithstanding the above, each State reserves the right to provide by law for the exercise of a veto power by the Governor of that State over any action of any commissioner from that State at any time within 10 days (Saturdays, Sundays, and public holidays in the particular State excepted) after receipt at the Governor's office of a certified copy of the minutes of the meeting at which such vote was taken. Each State may provide by law for the manner of delivery of such minutes, and for notification of the action thereon."

(4) Article IV of the agreement is amended to read as follows:

"For the effectuation of its authorized purposes the commission is hereby granted the following powers:

"(a) To have perpetual succession.

"(b) To sue and be sued.

"(c) To adopt and use an official seal.

"(d) To elect a chairman, vice-chairman, secretary, and treasurer, and to adopt suitable bylaws for the management of its affairs. The secretary and treasurer need not be members of the commission.

"(e) To appoint, hire, or employ counsel and such other officers and such agents and employees as it may require for the performance of its duties, by contract or otherwise, and fix and determine their qualifications, duties, and compensation.

"(f) To enter into contracts.

"(g) To acquire, own, hire, use, operate, and dispose of personal property.

"(h) To acquire, own, use, lease, operate, mortgage, and dispose of real property and interests in real property, and to make improvements thereon.

"(i) To grant by franchise, lease, or otherwise, the use of any property or facility owned or controlled by the commission and to make charges therefor.

"(j) To borrow money upon its bonds or other obligations, either with or without security, and to make, enter into, and perform any and all such covenants and agreements with the holders of such bonds or other obligations as the commission may determine to be necessary or desirable for the security and payment thereof, including without limitation of the foregoing, covenants and agreements as to the management and operation of any property or facility owned or controlled by it, the tolls, rents, rates, or other charges to be established, levied, made, and collected for any use of any such property or facility, or the application, use, and disposition of the proceeds of any bonds or other obligations of the commission

or the proceeds of any such tolls, rents, rates, or other charges or any other revenues or moneys of the commission.

"(k) To exercise the right of eminent domain within the Port District.

"(l) To determine the exact location, system, and character of and all other matters in connection with any and all improvements or facilities which it may be authorized to own, construct, establish, effectuate, operate, or control.

"(m) In addition to the foregoing, to exercise the powers, duties, authority, and jurisdiction heretofore conferred and imposed upon the aforesaid the Delaware River Joint Commission by the Commonwealth of Pennsylvania or the State of New Jersey, or both of the said 2 States.

"(n) To exercise all other powers not inconsistent with the constitutions of the 2 States or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, except the power to levy taxes or assessments, and generally to exercise in connection with its property and affairs, and in connection with property within its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.

"(o) To acquire, purchase, construct, lease, operate, maintain, and undertake any project, including any terminal, terminal facility, transportation facility, or any other facility of commerce and to make charges for the use thereof.

"(p) To make expenditures anywhere in the United States and foreign countries, to pay commissions, and hire or contract with experts or consultants, and otherwise to do indirectly anything which the commission may do directly.

"(q) To establish 1 or more operating divisions as deemed necessary to exercise the power and effectuate the purposes of this agreement.

"The commission shall also have such additional powers as may hereafter be delegated to or imposed upon it from time to time by the action of either State concurred in by legislation of the other.

"It is the policy and intent of the Legislature of the Commonwealth of Pennsylvania and the State of New Jersey that the powers granted by this article shall be so exercised that the American system of free competitive private enterprise is given full consideration and is maintained and furthered. In making its reports and recommendations to the Legislatures of the Commonwealth of Pennsylvania and the State of New Jersey on the need for any facility or project which the commission believes should be undertaken for the promotion and development of the Port District, the commission shall include therein its findings which fully set forth that the facility or facilities operated by private enterprise within the Port District and which it is intended shall be supplanted or added to are not adequate".

(5) Article XII of the agreement is amended to read as follows:

"The Commission shall, within 90 days after the end of each fiscal year, submit to the Governors and Legislatures of the Commonwealth of Pennsylvania and the State of New Jersey a complete and detailed report of the following:

"(1) its operations and accomplishments during the completed fiscal year;

"(2) its receipts and disbursements or revenues and expenses during that year in accordance with the categories and classifications established by the commission for its own operating and capital outlay purposes;

"(3) its assets and liabilities at the end of the fiscal year, including the status of reserve, depreciation, special or other funds including debits and credits of these funds;

"(4) a schedule of bonds and notes outstanding at the end of the fiscal year;

"(5) a list of all contracts exceeding $100,000 entered into during the fiscal year;

"(6) a business or strategic plan for the commission and for each of its operating divisions; and

"(7) a five year capital plan.

"Not less than once every five years, the commission shall cause a management audit of its operational effectiveness and efficiency to be conducted by an independent consulting firm selected by the commission. The first management audit to be conducted shall commence within 3 years of the date of coming into force of the supplemental compact or agreement authorized by this 1991 amendatory act. This audit is in addition to any other audit which the commission determines to conduct from time to time.

"The commission shall, not later than 2 years after the date of the coming into force of the supplemental compact or agreement authorized by this 1991 amendatory act, prepare a comprehensive master plan for the development of the Port District. The plan shall include, but not be limited to, plans for the construction, financing, development, reconstruction, purchase, lease, improvement, and operation of any terminal, terminal facility, transportation facility or any other facility of commerce or economic development activity. The master plan shall include the general location of such projects and facilities as may be included in the master plan and shall to the maximum extent practicable include, but not be limited to, a general description of each such project and facility, the land use requirements necessary therefor, and estimates of project costs and of a schedule for commencement of each such project. Prior to adopting such master plan, the commission shall give written notice to, afford a reasonable opportunity for comment, consult with and consider any recommendations from States, county and municipal government, as well as commissions, public corporations and authorities, and the private sector. The commission may modify or change any part of the plan in the same form and manner as provided for the adoption of the original plan. At the time the commission authorizes any project or facility, the commission shall promptly provide to the Governor and Legislature of each State a

detailed report on the project including its status within the master plan. The commission shall include within the authorization a status of the project or facility in the master plan and any amendment thereof, and no project shall be authorized if not included in the master plan or amendment thereof. Any project which has been commenced and approved by the commission prior to the adoption of the master plan shall be included, for informational purposes only, in the master plan. The commission shall provide notice of such on-going projects to those States, county and municipal governments, as well as entities in the private sector who would be entitled to such notice had the project not been commenced in anticipation of adopting the master plan, but there shall be no requirement that the project be delayed or deferred due to these provisions.

"In addition to other powers conferred upon it, and not in limitation thereof, the commission may acquire all right, title and interest in and to the Tacony-Palmyra bridge, across the Delaware River at Palmyra, New Jersey, together with any approaches and interests in real property necessary thereto. The acquisition of such bridge, approaches and interests by the commission shall be by purchase or by condemnation in accordance with the provisions of the Federal law consenting to or authorizing the construction of such bridge or approaches, or the acquisition of such bridge, approaches or interests by the commission shall be pursuant to and in accordance with the provisions of section 48:5–22 and 48:5–23 of the Revised Statutes of New Jersey, and for all the purposes of said provisions and sections the commission is hereby appointed as the agency of the State of New Jersey and the Commonwealth of Pennsylvania exercising the rights and powers granted or reserved by said Federal law or sections to the State of New Jersey and Commonwealth of Pennsylvania jointly or to the State of New Jersey acting in conjunction with the Commonwealth of Pennsylvania. The commission shall have authority to so acquire such bridge, approaches and interests, whether the same be owned, held, operated or maintained by any private person, firm, partnership, company, association or corporation or by any instrumentality, public body,

commission, public agency or political subdivision (including any county or municipality) of, or created by or in, the State of New Jersey or the Commonwealth of Pennsylvania, or by any instrumentality, public body, commission, or public agency of, or created by or in, a political subdivision (including any county or municipality) of the State of New Jersey or the Commonwealth of Pennsylvania. None of the provisions of the preceding paragraph shall be applicable with respect to the acquisition by the commission, pursuant to this paragraph, of said Tacony-Palmyra bridge, approaches and interests. The power and authority herein granted to the commission to acquire said Tacony-Palmyra bridge, approaches and interests shall not be exercised unless and until the Governor of the State of New Jersey and the Governor of the Commonwealth of Pennsylvania have filed with the commission their written consents to such acquisition.

"Notwithstanding any provision of this agreement, nothing herein contained shall be construed to limit or impair any right or power granted or to be granted to the Pennsylvania Turnpike Commission or the New Jersey Turnpike Authority, to finance, construct, operate, and maintain the Pennsylvania Trunpike System or any turnpike project of the New Jersey Turnpike Authority, respectively, throughout the Port District, including the right and power, acting alone or in conjunction with each other, to provide for the financing, construction, operation, and maintenance of one bridge across the Delaware River south of the city of Trenton in the State of New Jersey; provided that such bridge shall not be constructed within a distance of 10 miles, measured along the boundary line between the Commonwealth of Pennsylvania and the State of New Jersey, from the existing bridge, operated and maintained by the commission, across the Delaware River between the city of Philadelphia in the Commonwealth of Pennsylvania and the city of Camden in the State of New Jersey, so long as there are any outstanding bonds or other securities or obligations of the commission for which the tolls, rents, rates, or other revenues, or any part thereof, of said

existing bridge shall have been pledged. Nothing contained in this agreement shall be construed to authorize the commission to condemn any such bridge.

"Anything herein contained to the contrary notwithstanding, no bridge or tunnel shall be constructed, acquired, operated, or maintained by the commission across or under the Delaware River north of the boundary line between Bucks County and Philadelphia county in the Commonwealth of Pennsylvania as extended across the Delaware River to the New Jersey shore of said river, and any new bridge or tunnel authorized by or pursuant to this compact or agreement to be constructed or erected by the commission may be constructed or erected at any location south of said boundary line notwithstanding the terms and provisions of any other agreement between the Commonwealth of Pennsylvania and the State of New Jersey. Except as may hereafter be otherwise provided in conformity with Article IX hereof with respect to specific properties designated by action of the Legislatures of both of the signatory States, no property or facility owned or controlled by the commission shall be acquired from it by any exercise of powers of condemnation or eminent domain.".

(6) Article XIII of the agreement is amended to read as follows:

"As used herein, unless a different meaning clearly appears from the context:

" 'Port District' shall mean all the territory within the counties of Bucks, Chester, Delaware, Montgomery, and Philadelphia in Pennsylvania, and all the territory within the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem in New Jersey.

" 'Commission' shall mean the Delaware River Port Authority and, when required by the context, the board constituting the governing body thereof in charge of its property and affairs.

" 'Commissioner' shall mean a member of the governing body of the Delaware River Port Authority.

" 'Economic development activity' or 'economic development' means any structure or facility or any development within the Port District in connection with manufacturing,

port-oriented development, foreign trade zone site development or research, commercial, industrial, or recreational purposes, or for purposes of warehousing or consumer and supporting services directly relating to any of the foregoing or to any authority project or facility which are required for the sound economic development of the Port District.

" 'Terminal' shall include any marine, motor truck, motorbus, railroad, and air terminal or garage, also any coal, grain, and lumber terminal and any union freight and other terminals used or to be used in connection with the transportation of passengers and freight, and equipment, materials, and supplies therefor.

" 'Transportation facility' and 'facilities for transportation of passengers' shall include railroads operated by steam, electricity, or other power, rapid transit lines, motor trucks, motorbuses, tunnels, bridges, airports, boats, ferries, carfloats, lighters, tugs, floating elevators, barges, scows, or harbor craft of any kind, and aircraft, and equipment, materials, and supplies therefor.

" 'Terminal facility' shall include wharves, piers, slips, berths, ferries, docks, drydocks, ship repair yards, bulkheads, dock walls, basins, carfloats, floatbridges, dredging equipment, radio receiving and sending stations, grain or other storage elevators, warehouses, cold storage, tracks, yards, sheds switches, connections, overhead appliances, bunker coal, oil, and fresh water stations, markets, and every kind of terminal, storage, or supply facility now in use, or hereafter designed for use to facilitate passenger transportation and for the handling, storage, loading, or unloading of freight at terminals, and equipment, materials, and supplies therefor.

" 'Transportation of passengers' and 'passenger transportation' shall mean the transportation of passengers by railroad or other facilities.

" 'Rapid transit system' shall mean a transit system for the transportation of passengers, express mail, and baggage by railroad or other facilities, and equipment, materials, and supplies therefor.

" 'Project' shall mean any improvement, betterment, facility or structure authorized by or pursuant to this compact or

agreement to be constructed, erected, acquired, owned, or controlled or otherwise undertaken by the commission. 'Project' shall not include undertakings for purposes described in Article I, subdivisions (d), (e), (g), (h), and (i).

" 'Railroad' shall include railways, extensions thereof, tunnels, subways, bridges, elevated structures, tracks, poles, wires conduits, powerhouses, substations, lines for the transmission of power, carbarns, shops, yards, sidings, turnouts, switches, stations, and approaches thereto, cars, and motive equipment.

" 'Bridge' and 'tunnel' shall include such approach highways and interests in real property necessary therefor in the Commonwealth of Pennsylvania or the State of New Jersey as may be determined by the commission to be necessary to facilitate the flow of traffic in the vicinity of a bridge or tunnel or to connect a bridge or tunnel with the highway system or other traffic facilities in said Commonwealth or said State; provided, however, that the power and authority herein granted to the commission to construct new or additional approach highways shall not be exercised unless and until the Department of Transportation of the Commonwealth of Pennsylvania shall have filed with the commission its written approval as to approach highways to be located in said Commonwealth and the State Highway Department of the State of New Jersey shall have filed with the commission its written approval as to approach highways to be located in said State.

"'Facility' shall include all works, buildings, structures, property, appliances, and equipment, together with appurtenances necessary and convenient for the proper construction, equipment, maintenance, and operation of a facility or any 1 or more of them.

" 'Personal property' shall include choses in action and all other property now commonly, or legally, defined as personal property, or which may hereafter be so defined.

" 'Lease' shall include rent or hire.

" 'Municipality' shall include a county, city, borough, village, township, town, public agency, public authority, or political subdivision.

"Words importing the singular number include the plural number and vice versa.

"Wherever legislation or action by the Legislature of either signatory State is herein referred to it shall mean an act of the Legislature duly adopted in accordance with the provisions of the Constitution of such State.".

Approved October 27, 1992.

APPENDIX G

PENNSYLVANIA COLLECTIVE BARGAINING BY POLICEMEN OR FIREMEN ACT (43 P.S. §§ 217.1 to .10)

§ 217.1. Right to bargain

Policemen or firemen employed by a political subdivision of the Commonwealth or by the Commonwealth shall, through labor organizations or other representatives designated by fifty percent or more of such policemen or firemen, have the right to bargain collectively with their public employers concerning the terms and conditions of their employment, including compensation, hours, working conditions, retirement, pensions and other benefits, and shall have the right to an adjustment or settlement of their grievances or disputes in accordance with the terms of this act.

1968, June 24, P.L. 237, No. 111, § 1.

§ 217.2. Effort to settle disputes

It shall be the duty of public employers and their policemen and firemen employes to exert every reasonable effort to settle all disputes by engaging in collective bargaining in good faith and by entering into settlements by way of written agreements and maintaining the same.

1968, June 24, P.L. 237, No. 111, § 2.

§ 217.3. Time to begin bargaining and request arbitration

Collective bargaining shall begin at least six months before the start of the fiscal year of the political subdivision or of the Commonwealth, as the case may be, and any request for arbitration, as hereinafter provided, shall be made at least one hundred ten days before the start of said fiscal year.

1968, June 24, P.L. 237, No. 111, § 3.

§ 217.4. Impasse, failure to approve agreement; notice; arbitration request; board members, chairman; time for proceeding and determination

(a) If in any case of a dispute between a public employer and its policemen or firemen employes the collective bargain-

ing process reaches an impasse and stalemate, or if the appropriate lawmaking body does not approve the agreement reached by collective bargaining, with the result that said employers and employes are unable to effect a settlement, then either party to the dispute, after written notice to the other party containing specifications of the issue or issues in dispute, may request the appointment of a board of arbitration.

For purposes of this section, an impasse or stalemate shall be deemed to occur in the collective bargaining process if the parties do not reach a settlement of the issue or issues in dispute by way of a written agreement within thirty days after collective bargaining proceedings have been initiated.

In the case of disputes involving political subdivisions of the Commonwealth, the agreement shall be deemed not approved within the meaning of this section if it is not approved by the appropriate lawmaking body within one month after the agreement is reached by way of collective bargaining.

In the case of disputes involving the Commonwealth, the agreement shall be deemed not approved within the meaning of this section if it is not approved by the Legislature within six months after the agreement is reached by way of collective bargaining.

(b) The board of arbitration shall be composed of three persons, one appointed by the public employer, one appointed by the body of policemen or firemen involved, and a third member to be agreed upon by the public employer and such policemen or firemen. The members of the board representing the public employer and the policemen or firemen shall be named within five days from the date of the request for the appointment of such board. If, after a period of ten days from the date of the appointment of the two arbitrators appointed by the public employer and by the policemen or firemen, the third arbitrator has not been selected by them, then either arbitrator may request the American Arbitration Association, or its successor in function, to furnish a list of three members of said association who are residents of Pennsylvania from which the third arbitrator shall be selected. The arbitrator

appointed by the public employer shall eliminate one name from the list within five days after publication of the list, following which the arbitrator appointed by the policemen or firemen shall eliminate one name from the list within five days thereafter. The individual whose name remains on the list shall be the third arbitrator and shall act as chairman of the board of arbitration. The board of arbitration thus established shall commence the arbitration proceedings within ten days after the third arbitrator is selected and shall make its determination within thirty days after the appointment of the third arbitrator.

1968, June 24, P.L. 237, No. 111, § 4.

§ 217.5. Service of notice specifying issues in dispute

Notice by the policemen or firemen involved under section 4[1] shall, in the case of disputes involving the Commonwealth, be served upon the Secretary of the Commonwealth and, in the case of disputes involving political subdivisions of the Commonwealth, shall be served upon the head of the governing body of the local governmental unit involved.
1968, June 24, P.L. 237, No. 111, § 5.

[1] 43 P.S. § 217.4.

§ 217.6. Oaths; witnesses; subpoena

Each of the arbitrators selected in accordance with section 4 hereof[1] shall have the power to administer oaths and compel the attendance of witnesses and physical evidence by subpoena.
1968, June 24, P.L. 237, No. 111, § 6.

[1] 43 P.S. § 217.4.

§ 217.7. Determination; appeal; implementation; effective date of legislation

(a) The determination of the majority of the board of arbitration thus established shall be final on the issue or issues in dispute and shall be binding upon the public employer and the policemen or firemen involved. Such determination shall

be in writing and a copy thereof shall be forwarded to both parties to the dispute. No appeal therefrom shall be allowed to any court. Such determination shall constitute a mandate to the head of the political subdivision which is the employer, or to the appropriate officer of the Commonwealth if the Commonwealth is the employer, with respect to matters which can be remedied by administrative action, and to the lawmaking body of such political subdivision or of the Commonwealth with respect to matters which require legislative action, to take the action necessary to carry out the determination of the board of arbitration.

(b) With respect to matters which require legislative action for implementation, such legislation shall be enacted, in the case of the Commonwealth, within six months following publication of the findings, and, in the case of a political subdivision of the Commonwealth, within one month following publication of the findings. The effective date of any such legislation shall be the first day of the fiscal year following the fiscal year during which the legislation is thus enacted.

1968, June 24, P.L. 237, No. 111, § 7.

§ 217.8. Compensation of arbitrators; expenses

The compensation, if any, of the arbitrator appointed by the policemen or firemen shall be paid by them. The compensation of the other two arbitrators, as well as all stenographic and other expenses incurred by the arbitration panel in connection with the arbitration proceedings, shall be paid by the political subdivision or by the Commonwealth, as the case may be.

1968, June 24, P.L. 237, No. 111, § 8.

§ 271.9. Application of act

The provisions of this act shall be applicable to every political subdivision of this Commonwealth notwithstanding the fact that any such political subdivision, either before or after the passage of this act, has adopted or adopts a home rule charter.

1968, June 24, P.L. 237, No. 111, § 9.

§ 217.10. Severability provision

If any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of this act, and the application of such provision to other persons or circumstances, shall not be affected thereby, and to this end the provisions of this act are declared to be severable.

1968, June 24, P.L. 237, No. 111, § 10.

APPENDIX H

NEW JERSEY POLICE AND FIRE PUBLIC INTEREST ARBITRATION REFORM ACT (34:13A-1 to -29)

34:13A-14a. Short title; Police and Fire Public Interest Arbitration Reform Act

This act shall be known and may be cited as the "Police and Fire Public Interest Arbitration Reform Act."

L.1995, c. 425, § 1, eff. Jan. 10, 1996.

34:13A-15. Definitions

"Public fire department" means any department of a municipality, county, fire district or the State or any agency thereof having employees engaged in firefighting provided that such firefighting employees are included in a negotiating unit exclusively comprised of firefighting employees.

"Public police departments" means any police department or organization of a municipality, county or park, or the State, or any agency thereof having employees engaged in performing police services including but not necessarily limited to units composed of State troopers, police officers, detectives and investigators of counties, county parks and park commissions, grades of sheriff's officers and investigators; State motor vehicle officers, inspectors and investigators of the Alcoholic Beverage Commission, conservation officers in Fish, Game and Shell Fisheries, rangers in parks, marine patrolmen; correction officers, keepers, cottage officers, interstate escort officers, juvenile officers in the Department of Corrections and patrolmen of the Human Services and Corrections Departments; patrolmen of Capitol police and patrolmen of the Palisades Interstate Park Commission.

L.1977, c.85, § 2, eff. May 10, 1977.

34:13A-16. Public fire and police departments; impasse in labor disputes; mediation, factfindings, terminal procedures and compulsory arbitration

a. (1) Negotiations between a public fire or police department and an exclusive representative concerning the terms and conditions of employment shall begin at least 120 days prior to the day on which their collective negotiation agreement is to expire. The parties shall meet at least three times during that 120-day period. The first of those three meetings shall take place no later than the 90th day prior to the day on which their collective negotiation agreement is to expire. By mutual consent, the parties may agree to extend the period during which the second and third meetings are required to take place beyond the day on which their collective negotiation agreement is to expire. A violation of this paragraph shall constitute an unfair practice and the violator shall be subject to the penalties prescribed by the commission pursuant to rule and regulation.

(2) Whenever those negotiations concerning the terms and conditions of employment shall reach an impasse, the commission, through the Division of Public Employment Relations shall, upon the request of either party, or upon its own motion take such steps, including the assignment of a mediator, as it may deem expedient to effect a voluntary resolution of the impasse.

b. (1) In the event of a failure to resolve the impasse by mediation, the Division of Public Employment Relations, at the request of either party, shall invoke factfinding with recommendation for settlement of all issues in dispute unless the parties reach a voluntary settlement prior to the issuance of the factfinder's report and recommended terms of settlement. Factfindings shall be limited to those issues that are within the required scope of negotiations unless the parties to the factfinding agree to factfinding on permissive subjects of negotiation. In the event of a continuing failure to resolve an impasse by means of the procedure set forth in this paragraph, and notwithstanding the fact that such procedures have not been exhausted, the parties shall notify the commission, at a time and in a manner prescribed by the commission, as to whether

or not they have agreed upon a terminal procedure for resolving the issues in dispute. Any terminal procedure mutually agreed upon by the parties shall be reduced to writing, provide for finality in resolving the issues in dispute, and shall be submitted to the commission for approval.

(2) Notwithstanding the provisions of paragraph (2) of subsection a. of this section or paragraph (1) of this subsection, either party may petition the commission for arbitration on or after the date on which their collective negotiation agreement expires. The petition shall be filed in a manner and form prescribed by the commission. The party filing the petition shall notify the other party of its action. The notice shall be given in a manner and form prescribed by the commission.

Within 10 days of the receipt of the notice by the nonpetitioning party, the parties shall notify the commission as to whether or not they have agreed upon a terminal procedure for resolving the issues in dispute. Any terminal procedure mutually agreed upon by the parties shall be reduced to writing, provide for finality in resolving the issues in dispute, and shall be submitted to the commission for approval. If the parties fail to agree on a terminal procedure, they shall be subject to the provisions of subsection d. of this section.

c. Terminal procedures that are approvable include, but shall not be limited to the following:

(1) Conventional arbitration of all unsettled items.

(2) Arbitration under which the award by an arbitrator or panel of arbitrators is confined to a choice between (a) the last offer of the employer and (b) the last offer of the employees' representative, as a single package.

(3) Arbitration under which the award is confined to a choice between (a) the last offer of the employer and (b) the last offer of the employees' representative, on each issue in dispute, with the decision on an issue-by-issue basis.

(4) If there is a factfinder's report with recommendations on the issues in dispute, the parties may agree to arbitration under which the award would be confined to a choice among three positions: (a) the last offer of the employer as a single

package, (b) the last offer of the employees' representative as a single package, or (c) the factfinder's recommendations as a single package.

(5) If there is a factfinder's report with a recommendation on each of the issues in dispute, the parties may agree to arbitration under which the award would be confined to a choice on each issue from among three positions: (a) the last offer of the employer on the issue, (b) the employee representative's last offer on the issue, or (c) the factfinder's recommendation on the issue.

(6) Arbitration under which the award on the economic issues in dispute is confined to a choice between (a) the last offer of the employer on the economic issues as a single package and (b) the employee representative's last offer on the economic issues as a single package; and, on any noneconomic issues in dispute, the award is confined to a choice between (a) the last offer of the employer on each issue in dispute and (b) the employee representative's last offer on that issue.

d. The following procedure shall be utilized if parties fail to agree on a terminal procedure for the settlement of an impasse dispute:

(1) In the event of a failure of the parties to agree upon an acceptable terminal procedure the parties shall separately so notify the commission in writing, indicating all issues in dispute and the reasons for their inability to agree on the procedure. The substance of a written notification shall not provide the basis for any delay in effectuating the provisions of this subsection.

(2) Upon receipt of such notification from either party or on the commission's own motion, the procedure to provide finality for the resolution of issues in dispute shall be binding arbitration under which the award on the unsettled issues is determined by conventional arbitration. The arbitrator shall separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth in subsection g. of this section.

e. (1) The commission shall take measures to assure the impartial selection of an arbitrator or arbitrators from its spe-

cial panel of arbitrators. Unless the parties, in a time and manner prescribed by the commission, mutually agree upon the selection of an arbitrator from the commission's special panel of arbitrators and so notify the commission in writing of that selection, the assignment of any arbitrator for the purposes of this act shall be the responsibility of the commission, independent of and without any participation by either of the parties. The commission shall select the arbitrator for assignment by lot.

In any proceeding where an arbitrator selected by mutual agreement is unable to serve, the two parties shall be afforded an opportunity to select a replacement. If the two parties are unable to mutually agree upon the selection of a replacement within a time period prescribed by the commission, the commission shall select the replacement in the manner hereinafter provided.

In any proceeding where an assigned arbitrator is unable to serve or, pursuant to the preceding paragraph, the two parties are unable to mutually agree upon a replacement, the commission shall assign a replacement arbitrator. The assignment shall be the responsibility of the commission, independent of and without any participation by either of the parties. The commission shall select the replacement arbitrator for assignment by lot.

(2) Appointment to the commission's special panel of arbitrators shall be for a three-year term, with reappointment contingent upon a screening process similar to that used for determining initial appointments.

The commission may suspend, remove, or otherwise discipline an arbitrator for a violation of P.L.1977, c. 85 (C.34:13A-14 et seq.), section 4 of P.L.1995, c. 425 (C.34:13A-16.1) or for good cause.

f. (1) At a time prescribed by the commission, the parties shall submit to the arbitrator or tripartite panel of arbitrators their final offers on each economic and noneconomic issue in dispute. The offers submitted pursuant to this section shall be used by the arbitrator for the purposes of determining an award pursuant to paragraph (2) of subsection d. of this section. The commission shall promulgate rules and procedures

governing the submission of the offers required under this paragraph, including when those offers shall be deemed final, binding and irreversible.

(2) In the event of a dispute, the commission shall have the power to decide which issues are economic issues. Economic issues include those items which have a direct relation to employee income including wages, salaries, hours in relation to earnings, and other forms of compensation such as paid vacation, paid holidays, health and medical insurance, and other economic benefits to employees.

(3) Throughout formal arbitration proceedings the chosen arbitrator or panel of arbitrators may mediate or assist the parties in reaching a mutually agreeable settlement.

(4) Arbitration shall be limited to those subjects that are within the required scope of collective negotiations, except that the parties may agree to submit to arbitration one or more permissive subjects of negotiation.

(5) The decision of an arbitrator or panel of arbitrators shall include an opinion and an award, and shall be rendered within 120 days of the selection of the arbitrator by the mutual agreement of both parties or the commission's assignment of that arbitrator or panel of arbitrators, as the case may be, pursuant to paragraph (1) of subsection e. of this section; provided, however, the arbitrator or panel of arbitrators, for good cause, may petition the commission for an extension of not more than 60 days. The two parties, by mutual consent, may agree to an extension. The parties shall notify the arbitrator and the commission of any such agreement in writing. The notice shall set forth the specific date on which the extension shall expire. Any arbitrator or panel of arbitrators violating the provisions of this paragraph may be subject to the commission's powers under paragraph (2) of subsection e. of this section. The decision shall be final and binding upon the parties and shall be irreversible, except:

(a) Within 14 days of receiving an award, an aggrieved party may file notice of an appeal of an award to the commission on the grounds that the arbitrator failed to apply the criteria specified in subsection g. of this section or violated the

standards set forth in N.J.S.2A:24-8 or N.J.S.2A:24-9. The appeal shall be filed in a form and manner prescribed by the commission. In deciding an appeal, the commission, pursuant to rule and regulation and upon petition, may afford the parties the opportunity to present oral arguments. The commission may affirm, modify, correct or vacate the award or may, at its discretion, remand the award to the same arbitrator or to another arbitrator, selected by lot, for reconsideration. An aggrieved party may appeal a decision of the commission to the Appellate Division of the Superior Court.

(b) An award that is not appealed to the commission shall be implemented immediately. An award that is appealed and not set aside by the commission shall be implemented within 14 days of the receipt of the commission's decision absent a stay.

(6) The parties shall bear the costs of arbitration subject to a fee schedule approved by the commission.

g. The arbitrator or panel of arbitrators shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant to the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor:

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c. 68 (C.40A:4-45.1 et seq.).

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L.1995, c. 425 (C.34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c. 68 (C.40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

h. A mediator, factfinder, or arbitrator while functioning in a mediatory capacity shall not be required to disclose any files, records, reports, documents, or other papers classified as confidential received or prepared by him or to testify with regard to mediation, conducted by him under this act on behalf of any party to any cause pending in any type of proceeding under this act. Nothing contained herein shall exempt such an individual from disclosing information relating to the commission of a crime.

Amended by L.1995, c. 425, § 3, eff. Jan. 10, 1996; L.1997, c. 183, § 1, eff.Aug. 1, 1997.

34:13A-16.1. Continuing education program for arbitrator appointed to special panel; participation required

The commission shall establish an annual continuing education program for the arbitrators appointed to its special panel of arbitrators. The program shall include sessions or seminars on topics and issues of relevance and importance to arbitrators serving on the commission's special panel of arbitrators, such as public employer budgeting and finance, public management and administration, employment trends and labor costs in the public sector, pertinent court decisions, employment issues relating to law enforcement officers and firefighters, and such other topics as the commission shall deem appropriate and necessary. In preparing the curriculum for the annual education program required under this section, the commission shall solicit suggestions from employees' representatives and public employers concerning the topics and issues each of those parties deem relevant and important.

Every arbitrator shall be required to participate in the commission's continuing education program. If a mediator or

an arbitrator in any year fails to participate, the commission may remove that person from its special panel of arbitrators. If an arbitrator fails to participate in the continuing education program for two consecutive years, the commission shall immediately remove that individual from the special panel.

L.1995, c. 425, § 4, eff. Jan. 10, 1996.

34:13A-16.2. Guidelines for determining comparability of jurisdictions

a. The commission shall promulgate guidelines for determining the comparability of jurisdictions for the purposes of paragraph (2) of subsection g. of section 3 of P.L.1977, c. 85 (C. 34:13A-16).

b. The commission shall review the guidelines promulgated under this section at least once every four years and may modify or amend them as is deemed necessary; provided, however, that the commission shall review and modify those guidelines in each year in which a federal decennial census becomes effective pursuant to R.S. 52:4-1.

L.1995, c. 425, § 5, eff. Jan. 11, 1996.

34:13A-16.3. Fee schedule

The commission may establish a fee schedule to cover the costs of effectuating the provisions of P.L.1977, c. 85 (C. 34:13A-14 et seq.), as amended and supplemented; provided, however, that the fees so assessed shall not exceed the commission's actual cost of effectuating those provisions.

L.1995, c. 425, § 6, eff. Jan. 10, 1996.

34:13A-16.4. Biennial reports to Governor and Legislature

The commission shall submit biennial reports to the Governor and the Legislature on the effects of this amendatory and supplementary act on the negotiations and settlements between local governmental units and their public police departments and public fire departments and to include with that report any recommendations it may have for changes in

the law. The reports required under this section shall be submitted in January of even numbered years.

L.1995, c. 425, § 7, eff. Jan. 10, 1996.

34:13A-16.5. Rules and regulations

The commission, in accordance with the provisions of the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), shall promulgate rules and regulations to effectuate the purposes of this act.

L.1995, c. 425, § 8, eff. Jan. 10, 1996.

34:13A-16.6. Private sector wage increase survey conducted on county and state basis; public document

Beginning on the July 1 next following the enactment of P.L.1995, c. 425 (C. 34:13A-14a et al.) and each July 1 thereafter, the New Jersey Public Employment Relations Commission shall perform, or cause to be performed, a survey of private sector wage increases for use by all interested parties in public sector wage negotiations. The survey shall include information on a Statewide and countywide basis. The survey shall be completed by September 1 next following enactment and by September 1 of each year thereafter. The survey shall be a public document and the commission shall make it available to all interested parties at a cost not exceeding the actual cost of producing the survey.

L.1995, c. 425, § 9, eff. Jan. 10, 1996.

34:13A-17. Powers of arbitrator

The arbitrator may administer oaths, require the attendance of witnesses, and the production of such books, papers, contracts, agreements and documents as he may deem material to a just determination of the issues in dispute, and for such purpose may issue subpoenas. If any person refuses to obey a subpoena, or refuses to be sworn or to testify, or if any witness, party or attorney is guilty of any contempt while in attendance at any hearing, the arbitrator may, or the Attorney

General if requested shall, invoke the aid of the Superior Court within the county in which the hearing is being held, which court shall issue an appropriate order. Any failure to obey the order may be punished by the court as contempt.

L.1995, c. 85, § 4, eff. May 10, 1977.

34:13A-18. Prohibited issues in finding, opinion or order of arbitrator

The arbitrator shall not issue any finding, opinion or order regarding the issue of whether or not a public employer shall remain as a participant in the New Jersey State Health Benefits Program or any governmental retirement system or pension fund, or statutory retirement or pension plan; nor, in the case of a participating public employer, shall the arbitrator issue any finding, opinion or order regarding any aspect of the rights, duties, obligations in or associated with the New Jersey State Health Benefits Program or any governmental retirement system or pension fund, or statutory retirement or pension plan; nor shall the arbitrator issue any finding, opinion or order reducing, eliminating or otherwise modifying retiree benefits which exist as a result of a negotiated agreement, ordinance or resolution because of the enactment of legislation providing such benefits for those who do not already receive them.

Amended by L.1997, c. 330, § 4, eff. June 1, 1998.

34:13A-19. Decision; enforcement; venue; effective date of award; amendment or modification

The decision of the arbitrator may be forced at the instance of either party in the Superior Court with venue laid in the county in which the dispute arose. The commencement of a new public employer fiscal year after the initiation of arbitration procedures under this act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitrator or his decision. Increases in rates of compensation awarded by the arbitrator shall take effect on

the date of implementation prescribed in the award. The parties, by stipulation, may at any time amend or modify an award of arbitration.

L.1977, c. 85, § 6, eff. May 10, 1977.

34:13A-20. Repealed by L.1995, c. 425, § 10, eff. Jan. 10, 1996

34:13A-21. Change in conditions during pendency of proceedings; prohibition without consent

During the pendency of proceedings before the arbitrator, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other, any change in or of the public employer or employee representative notwithstanding; but a party may so consent without prejudice to his rights or position under this supplementary act.

L.1977, c. 85, § 8, eff. May 10, 1977.

34:13A–22. Definitions

As used in this act:

"Commission" means the New Jersey Public Employment Relations Commission.

"Commissioner" means the Commissioner of Education.

"Discipline" includes all forms of discipline, except tenure charges filed pursuant to the provisions of subsubarticle 2 of subarticle B of Article 2 of chapter 6 of Subtitle 3 of Title 18A of the New Jersey Statutes, N.J.S. 18A:6-10 et seq., or the withholding of increments pursuant to N.J.S. 18A:29-14.

"Employees" means employees of an employer as defined by this act.

"Employer" means any local or regional school district, educational services commission, jointure commission, county special services school district, or board or commission under the authority of the commissioner or the State Board of Education.

"Extracurricular activities" include those activities or assignments not specified as part of the teaching and duty assignments scheduled in the regular work day, work week, or work year.

"Minor discipline" includes, but is not limited to, various forms of fines and suspensions, but does not include tenure charges filed pursuant to the provisions of subsubarticle 2 of subarticle B of Article 2 of chapter 6 of Subtitle 3 of Title 18A of the New Jersey Statutes N.J.S. 18A:6-10 et seq., or the withholding of increments pursuant to N.J.S. 18A:29-14, letters of reprimand, or suspensions with pay pursuant to section 1 of P.L.1971, c. 435 (C. 18A:6-8.3) and N.J.S. 18A:25-6.

"Regular work day, work week, or work year" means that period of time that all members of the bargaining unit are required to be present and at work.

"Teaching staff member" means a member of the professional staff of any employer holding office, position or employment of such character that the qualifications, for the office, position or employment, require him to hold a valid and effective standard, provisional or emergency certificate, appropriate to that office, position or employment, issued by the State Board of Examiners. "Teaching staff member" includes a school nurse.

L.1980, c. 209, § 1, eff. Jan. 4, 1990.

As amended, the bill also permits an employer to assign qualified teachers from within the district if it is not possible to locate a qualified person from outside of the district.

The bill provides public schools with the authority to impose minor discipline on employees, if negotiated. As amended, the bill defines minor discipline as including fines and suspensions, but not letters of reprimand, tenure changes, withholding of increments, or certain suspensions with pay. As amended, the bill permits an employer to use whatever disciplinary sanctions are authorized by law if there is no negotiated agreement regarding minor discipline. The bill includes in the scope of those negotiations the establishment of a schedule for the fines and suspensions. As amended, the bill also provides that all discipline, including reprimands, may be

appealed through the locally negotiated grievance procedures which must provide for binding arbitration as the final step in the procedure. The withholding of a teaching staff member's increment based on the actual teaching performance would still be appealable to the Commissioner of Education.

The bill also forbids transfers of employees between sites for disciplinary reasons. If there is a dispute as to whether the reason for a transfer or increment withholding is predominately disciplinary, the New Jersey Public Employment Relations Commission will make the determination.

This bill is not to be construed as detracting from the rights of those covered or as detracting from the rights of other employees not covered by this bill.

The committee amendments provide the following:

1. That an employer may assign qualified teachers from within the district for extracurricular activities if it is not possible to locate a qualified person from outside of the district;

2. That suspensions with pay pursuant to N.J.S.18A:6-8.3 and N.J.S.18A:25-6 and reprimands not be regarded as "minor discipline" for the purposes of the bill;

3. That an employer be permitted to use whatever disciplinary sanctions are authorized by law in cases where there is no negotiated agreement regarding minor discipline; and

4. That the negotiated grievance procedure which applies to reprimands must provide for binding arbitration as the final step in the procedure.

34:13A-23. Extracurricular activities as mandatory subjects for collective negotiations

All aspects of assignment to retention in, dismissal from, and any terms and conditions of employment concerning extracurricular activities shall be deemed mandatory subjects for collective negotiations between an employer and the majority representative of the employees in a collective bargaining unit, except that the establishment of qualifications for such positions shall not constitute a mandatory subject for negotiations. If the negotiated selection procedures fail to produce a qualified candidate from within the district the

employer may employ from outside the district any qualified person who holds an appropriate New Jersey teaching certificate. If the employer is unable to employ a qualified person from outside of the district, the employer may assign a qualified teaching staff member from within the district.
L.1989, c. 269, § 2, eff. Jan. 4, 1990.

34:13A-24. Authority of employer to impose minor discipline on employees

a. Notwithstanding any other law to the contrary, and if negotiated with the majority representative of the employees in the appropriate collective bargaining unit, an employer shall have the authority to impose minor discipline on employees. Nothing contained herein shall limit the authority of the employer to impose, in the absence of a negotiated agreement regarding minor discipline, any disciplinary sanction which is authorized and not prohibited by law.

b. The scope of such negotiations shall include a schedule setting forth the acts and omissions for which minor discipline may be imposed, and also the penalty to be imposed for any act or omission warranting imposition of minor discipline.

c. Fines and suspensions for minor discipline shall not constitute a reduction in compensation pursuant to the provisions of N.J.S. 18A:6-10.
L.1989, c. 269, § 3, eff. Jan. 4, 1990.

34:13A-25. Transfers between work sites not mandatorily negotiable

Transfers of employees by employers between work sites shall not be mandatorily negotiable except that no employer shall transfer an employee for disciplinary reasons.
L.1989, c. 269, § 4, eff. Jan. 4, 1990.

34:13A-26. Withholding of employee's increment for predominately disciplinary reasons

Disputes involving the withholding of an employee's increment by an employer for predominately disciplinary rea-

sons shall be subject to the grievance procedures established pursuant to law and shall be subject to the provisions of section 8 of this act.[1]

L.1989, c. 269, § 5, eff. Jan. 4, 1990.

[1] Section 34:13A-29.

34:13A-27. Dispute whether transfer between work sites or withholding increment is predominately disciplinary; determination by commission; appeal

a. If there is a dispute as to whether a transfer of an employee between work sites or withholding of an increment of a teaching staff member is disciplinary, the commission shall determine whether the basis for the transfer or withholding is predominately disciplinary.

b. If the commission determines that the basis for a transfer is predominately disciplinary, the commission shall have the authority to take reasonable action to effectuate the purposes of this act.

c. If the commission determines that the basis for an increment withholding is predominately disciplinary, the dispute shall be resolved through the grievance procedures established pursuant to law and shall be subject to the provisions of section 8 of this act.[1]

d. If a dispute involving the reason for the withholding of a teaching staff member's increment is submitted to the commission pursuant to subsection a. of this section, and the commission determines that the reason for the increment withholding relates predominately to the evaluation of a teaching staff member's teaching performance, the teaching staff member may file a petition of appeal pursuant to N.J.S. 18A:6-9 and N.J.S. 18A:29-14, and the petition shall be deemed to be timely if filed within 90 days of notice of the commission's decision, or of the final judicial decision in any appeal from the decision of the commission, whichever date is later.

L.1989, c. 269, § 6, eff. Jan. 4, 1990.

34:13A-28. Construction of act to provide additional rights

Nothing in this act shall be deemed to restrict or limit any right established or provided by section 7 of P.L.1968, c. 303

(C. 34:13A-5.3); this act shall be construed as providing additional rights in addition to and supplementing the rights provided by that section.
L.1989, c. 269, § 7, eff. Jan. 4, 1990.

34:13A-29. Grievance procedures; binding arbitration as terminal step; burden of proof

a. The grievance procedures that employers covered by this act are required to negotiate pursuant to section 7 of P.L.1968, c. 303 (C. 34:13A-5.3) shall be deemed to require binding arbitration as the terminal step with respect to disputes concerning imposition of reprimands and discipline as that term is defined in this act.

b. In any grievance procedure negotiated pursuant to this act, the burden of proof shall be on the employer covered by this act seeking to impose discipline as that term is defined in this act.
L.1989, c. 269, § 8, eff. Jan. 4, 1990.